

## **BILL ANALYSIS**

Senate Research Center

S.B. 271  
By: Harris  
Jurisprudence  
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Enrolled

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

When a person is found to be incapable of taking care of his or her physical and economic needs, the person can be taken to a probate court to be designated as totally incapacitated. That person is then paired with someone who serves as a guardian to appropriately manage the person's affairs. In many circumstances the guardian is a family member, friend, or volunteer from a guardianship program that operates within the county. Not all counties in Texas have guardianship programs and in these instances the court remains the guardian of the ward. When a ward is living in another county or is living a far distance from the court it can be impossible for the court to fulfill its duty as guardian and could lead to the neglect or abuse of the ward.

S.B. 271 amends current law relating to informal caregiver support services and to the appointment of a successor guardian for certain wards adjudicated as totally incapacitated.

### **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 D, Chapter 161, Human Resources Code, by adding Section 161.076, as follows:

Sec. 161.076. INFORMAL CAREGIVER SERVICES. (a) Defines "area agency on aging" and "local entity."

(b) Requires the Department of Aging and Disability Services (DADS) to coordinate with area agencies on aging and, to the extent considered feasible by DADS, authorizes DADS to coordinate with other local entities to coordinate public awareness outreach efforts regarding the role of informal caregivers in long-term care situations, including efforts to raise awareness of support services available in this state for informal caregivers.

(c) Requires DADS to perform certain duties to assist a local entity with outreach efforts under this section, including expanding an existing DADS website to provide a link through which a local entity is authorized to post and access best practices information regarding informal caregiver support, and create a document template that a local entity is authorized to adapt as necessary to reflect resources available to informal caregivers in the area supported by the entity.

(d) Requires DADS to create or modify a form to be included in the functional eligibility determination process for long-term care benefits for older persons under the Medicaid program and, to the extent considered feasible by DADS, authorizes DADS to include a form in systems for other long-term care support services. Requires DADS to use the form to identify informal caregivers for the purpose of enabling DADS to refer the caregivers to available support services. Authorizes that the form be based on an existing form, include optional questions for an informal caregiver, or include questions from similar forms used in other states.

(e) Requires DADS to coordinate with area agencies on aging and, to the extent considered feasible by DADS, authorizes DADS to coordinate with other local entities to develop and implement a protocol to evaluate the needs of certain informal caregivers. Requires that the protocol provide guidance on the type of caregivers who should receive an assessment, and include the use of a standardized assessment tool that may be based on similar tools used in other states, including the Tailored Caregiver Assessment and Referral process.

(f) Requires DADS to require area agencies on aging and, to the extent considered feasible by DADS, other local entities to use the protocol and assessment tool under Subsection (e) and report the data gathered from the assessment tool to DADS.

(g) Requires DADS to analyze the data reported under Subsection (f) and collected from the form under Subsection (d), and submit a report not later than December 1 of each even-numbered year to the governor and the Legislative Budget Board that summarizes the data analysis.

(g-1) Requires DADS, notwithstanding Subsection (g), to submit the initial report required by that subsection not later than December 1, 2012. Provides that this section expires January 1, 2013.

(h) Requires DADS to use the data analyzed under Subsection (g) to evaluate the needs of assessed informal caregivers; measure the effectiveness of certain informal caregiver support interventions; improve existing programs; develop new services as necessary to sustain informal caregivers; and determine the effect of informal caregiving on employment and employers.

SECTION 2. Amends Section 161.101, Human Resources Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Prohibits DADS from being required by a court to file an application for guardianship, and except as provided by Subsection (f) and Section 695(c), Texas Probate Code, prohibits DADS from being appointed as permanent guardian for any individual unless DADS files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(f) Requires DADS, on appointment by a probate court under Section 695(c), Texas Probate Code, to serve as the successor guardian of the person or estate, or both, of a ward described by that section.

SECTION 3. Amends Section 695, Texas Probate Code, by adding Subsections (c), (d), and (e), as follows:

(c) Authorizes the court to appoint DADS as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if there is no less restrictive alternative to continuation of the guardianship; there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian; the ward is located more than 100 miles from the court that created the guardianship; the ward has private assets or access to government benefits to pay for the needs of the ward; DADS is served with citation and a hearing is held regarding DADS's appointment as proposed successor guardian; and the appointment of DADS does not violate a limitation imposed by Subsection (d) of this section.

(d) Provides that the number of appointments under Subsection (c) of this section is subject to an annual limit of 55. Requires that the appointments be distributed equally or as near as equally as possible among the health and human services regions of this state. Authorizes DADS at its discretion to establish a different distribution scheme to promote the efficient use and administration of resources.

(e) Requires that if DADS is named as a proposed successor guardian in an application in which DADS is not the applicant, citation be issued and served on DADS as provided by Section 633(c)(5) (relating to the person named in the application to be appointed guardian if that person is not the applicant) of this code.

SECTION 4. Requires DADS, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 5. Effective date: upon passage or September 1, 2009.