

2007 TEXAS LEGISLATIVE CHANGES AFFECTING GUARDIANSHIP PRACTITIONERS

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It was a great legislative session for professional guardians. Professional guardians are finally getting the legislative attention that they deserve for all their hard work. Bill numbers are listed in parentheses. To look them up, go to www.capitol.state.tx.us and enter the bill number. Here is a quick summary of the major changes affecting guardianship law and practice:

1. Filing Fee Supplement of \$20 for Court Initiated Guardianship. An additional \$20 filing fee will be charged on original probate actions and adverse probate actions, and the funds collected will be deposited in a court-initiated guardianship fund in the county treasury of the county collecting the fees. These funds may be used only to supplement, rather than supplant, other available county funds used to support court-initiated guardianship under TPC 683 to pay GALs, AALs, and local guardianship programs to provide guardians for incapacitated adults without family support. This fee is projected to raise \$1.2 million statewide to support the use of court-initiated guardianship and hopefully encourage the growth of more local guardianship programs across the state. Loc. Gov. 118.051E & 118.067 (HB1295)

2. Local Guardianship Program to Have Money Management Component or Plan. In order to receive future grants from HHSC, a local guardianship program operating in a county exceeding 150,000 in population must either provide money management services or submit a money management establishment or referral plan acceptable to HHSC. Hopefully, HHSC will increase the amount of grant funding available to local guardianship programs with this increased safeguard that such programs will also provide the less restrictive alternative of money management. Gov. 531.125 (HB2691)

3. Provisional Certification. The Guardianship Certification Board will now be able to issue a provisional certificate to individuals to provide guardianship services who are being supervised by a guardian who has been certified by the GCB. This will assist programs who are training new guardians to replace resigning or retiring guardians. The Texas Supreme Court is to adopt rules and procedures for issuing provisional certificates. The rules should be adopted soon, and the committee has proposed a maximum two year provisional certification before a guardian must obtain certification. Gov. 111.0421 (SB506)

4. DADS to Send Guardian Listing Directly to GCB. DADS will now be allowed to send listings and criminal background checks of its guardians directly to the GCB rather than to the counties that DADS serves. TPC 697A & 698 & Gov. 411 (SB291)

5. Guardianship Certification Board Entitled to Criminal History Information. The GCB is entitled to look at criminal history information of applicants for certification as guardians and this information may also be used for purposes related to denial, suspension, revocation or renewal of a certificate issued by the board. Gov. 411.1406 (SB505)

6. Guardianship Certification Board Reimbursement. GCB members will now be entitled to reimbursement for travel expenses related to GCB meetings and official board duties. Gov. 111.011 (SB507)

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7. Multi-State Guardianship Proceedings - TPC 894. A Texas court in which a guardianship proceeding is filed and in which venue is proper may delay further action in the proceeding if another guardianship proceeding is subsequently filed in a court in another state and venue of the proceeding in the other state is proper. The Texas court shall then determine whether venue of the proceeding is more suitable in the Texas court or in the court of the other state. In making that determination, the court may consider the interests of justice, the convenience of the parties, and the best interests of the ward or proposed ward. The Texas court may issue any order it considers necessary to protect the proposed ward or the proposed ward's estate. The Texas court shall resume the guardianship proceeding if it determines that Texas venue is more suitable. If the Texas court determines that venue is more suitable in the other state, the Texas court shall transfer the proceeding to the other state with the consent of the court there. (HB342) Hopefully, this statute will be a precursor to the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in Texas next legislative session.

8. Licensing of Residences Providing Personal Care to those with Mental Illness. Cities may now opt into a licensing requirement for housing establishments that provide residential services as well as some personal care services to those with mental illness by adopting a city licensing requirement such as the one adopted in El Paso. For more information on how to do this, contact Terry Hammond at terry@hammondlaw.net (HB1168)

9. Jurisdiction with Family Court. TPC 606(k) A probate court has jurisdiction in a guardianship proceeding involving a disabled adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child. Family Code section 154.309(c) was also modified to provide that despite the family court's continuing jurisdiction in these matters, a probate court may exercise jurisdiction in a guardianship proceeding for the person after the person is an adult. (HB585)

10. Appointment of Conservator of Disabled Young Adult as Guardian. TPC682A(a-1)&(a-2). A conservator of a disabled child for whom a probate court obtains jurisdiction under TPC 606k above may file an application under TPC 682 to be appointed guardian and attach a doctor's letter pursuant to TPC 687, , if the court is able to make the findings required by TPC 684, the court, notwithstanding TPC 677, shall appoint the conservator as guardian without conducting a hearing and shall, to the extent possible, preserve the terms of possession and access to the ward that applied before the probate court obtained jurisdiction. (HB585)

11. Default Termination of Guardian Ad Litem – TPC 645(f). The term of appointment of a guardian ad litem made in a proceeding for the appointment of a guardian expires, without a court order, on the date the court either appoints a guardian or denies the application for the appointment of a guardian unless the court determines that the continued appointment of the guardian ad litem is in the ward's best interest. (HB417)

12. Default Termination of Attorney ad Litem – TPC 646(e) The term of appointment of an attorney ad litem appointed under TPC 646 expires, without court order, on the date the court either appoints a guardian or denies the application for appointment of a guardian unless the court determines that the continued appointment of the attorney ad litem is in the ward's best interest. (HB417)

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13. Payment for Professional Services – TPC665A. This section is amended to remove the limitation that only fees of attorneys, mental health professionals, and interpreters appointed under 646 and 687 are to be taxed as costs, and the section is expanded to provide that the fees of these professionals appointed under any section in Chapter 13 are to be taxed as costs in the case. (HB417)

14. Specific Mention of Removal of Right to Vote or Drive – TPC 682(4). A guardianship application must now specifically address whether the applicant is requesting the termination of the proposed ward's right to vote and/or drive. (HB417)

15. Appointing Non-Spouse Parents as Co-Guardians – TPC 690. Divorced parents of a child who has never been the subject of a suit affecting parent child relationship or joint managing conservators may be appointed as co-guardians of the person if such is in the ward's best interests. (HB417)

16. Criminal Background Check - TPC 698. Clerks must obtain criminal background checks on each person proposed to serve as a guardian, successor guardian or temporary guardian other than family members of the proposed ward and attorneys. An applicant may submit the criminal history record if it is dated within 30 days of the hearing. (HB417)

17. New Bond Required Without Notice - TPC 713. If the probate judge believes a bond is insufficient or that the bond has been lost or destroyed, the judge may, without notice, enter an order requiring the guardian to give a new bond, or the judge may cause the guardian to be cited to show cause why the guardian should not give a new bond. (HB1709)

18. Order Requiring New Bond – TPC 714. The order for a new bond under TPC 713 must state the reasons for requiring a new bond, the amount of the new bond, and the time within which the new bond must be given, which may not be earlier than the 10th day after the date of the order. If the guardian opposes the order, the guardian may demand a hearing on the order. The hearing must be held before the expiration of the time within which the new bond must be given. (HB1709)

19. Removal of Ineligible Guardians – TPC 761. A guardian who subsequent to appointment become ineligible to serve as guardian may be removed. A successor guardian may be appointed immediately without notice if a necessity exists. (HB617)

20. Investment Plans. TPC 855B. Investment plans by guardians of the estate will only be required now if the guardian wishes to opt out of the approved investments in TPC 855. To opt out, the guardian must file an application to approve an investment plan within 180 days of qualification. (HB417)

21. TPC 867 Management Trusts May Only Be Created by Probate Courts. TPC 867(b-1) has been amended to clarify that only courts exercising probate jurisdiction may create an 867 Management Trust. Section 2 of HB519 provides that if any applications for 867 Management Trusts are pending in any courts without probate jurisdiction, the court shall transfer the proceeding to a proper court exercising probate jurisdiction and that all processes, writs, bonds, or other obligations issued from the transferring court are returnable to the court to which the proceeding is transferred as if originally issued by that court. (HB519)