

## **Legislative Update**

### **82nd Legislature, Regular and First Called Sessions (2011)**

The continued functioning of the Guardianship Certification Board was not the subject of any legislation passed during the 82nd Legislature. Issues with funding for the guardianship certification program at the Office of Court Administration were addressed by HB 1614 during the regular session and SB 1 and SB 2 during the first called session.

The 82nd Legislature produced four bills which expanded rights to expunction and orders of non-disclosure; HB 351, HB 1106, HB 1994 and SB 462. Although none of these bills specifically references guardianship, they are included in this update because further expansion of expunction and non-disclosure rights may have an impact on the issues addressed by the Board considering applicants' criminal history.

This rest of the update briefly summarizes new legislation concerning Texas guardians and their role in the judicial system. SB 220, SB 867 and SB 1733 in particular relate to certified guardians.

Some of the bills included in this report may not directly relate to guardianship. Its focus is legislation, tracked by the Office of Court Administration, that affects the probate courts, judges, county clerks, the Guardianship Certification Board, and other judicial system actors. It also includes bills tracked by the OCA in the areas of mental health and probate.

The report was excerpted, for the most part, from the Office of Court Administration's legislative update summarizing new legislation directly affecting the Texas judiciary. You may read the [complete report on OCA's website](#). The full text of all bills referenced is available from the Texas Legislature Online's website, [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

#### **Regular Session (January 11 - May 30, 2011)**

##### **HB 118** - Effective 9/1/11.

Requires written notice to patient or patient's legal representative before hospital can release medical records. *See* § 241.103, Health & Safety Code.

##### **HB 167** – Effective 9/1/11.

Permits court to authorize transportation of person to mental health facility by, in order of priority, a special officer for mental health assignment, the facility administrator of the designated mental health facility, a relative or other responsible person, a representative of the local mental health authority, a qualified transportation service provider selected from a list established by the county commissioners court, or the sheriff or constable. Authorizes the commissioners court to establish and maintain a list of qualified transportation service providers, establish procedures for a person to be included on the list, and contract with qualified service providers. Requires the Department of State Health Services to prescribe uniform standards that must be met to be listed as a qualified transportation service provider and standards governing how the transportation of a person to a mental health facility must be provided. *See* §§ 574.045, 574.0455, Health & Safety Code.

##### **HB 300** - Effective 9/1/12.

Refines restrictions on release of protected health information by covered entities, as defined by Health & Safety Code § 181.001. The Health & Human Services Commission must adopt standards, and the Office of the Attorney General must maintain a website regarding privacy rights of consumers dealing with covered entities. Covered entities' employees must undergo training related to the protection and

confidentiality of health information. Provides for penalties, both civil and criminal. *See* Chapter 181, Health & Safety Code; §§ 521.053, 521.151 and 522.002(b), Bus. & Commerce Code; § 531.0994, Gov't Code; and § 602.054, Ins. Code.

**HB 351** – Effective 9/1/11.

Broadens a person's eligibility for expunction of records and files relating to an arrest. Specifically, allows for expunctions on the basis of the defendant's actual innocence. *See* Art. 55.01, Code of Crim. Proc.

**HB 549** – Effective 6/17/11.

Prohibits a person otherwise authorized to control the disposition of a decedent's remains from controlling the disposition if the person has been indicted for an offense involving family violence in connection with the decedent's death. Makes the court's authority under Section 115(c), Probate Code, to limit the right of a surviving spouse to control the burial and interment or cremation of the deceased spouse subject to this prohibition. *See* § 711.001, Health & Safety Code; § 115(c), Probate Code.

**HB 1075** - Effective 9/1/11.

Adds persons with intellectual disabilities to those who can be the subject of an AMBER alert. *See* §§ 411.351, 411.352, 411.355, 411.356, 411.358 and 411.359, Gov't Code.

**HB 1106** – Effective 9/1/11.

Requires courts placing a defendant on deferred adjudication to inform him or her of the right to petition the court for an order of nondisclosure. *See* Art. 42.12, Sec. 5, Code of Crim. Proc.

**HB 1481** - Effective 9/1/11.

Requires state agencies to avoid certain terms and use preferred first person respectful language in reference to individuals with disabilities in new statutes and rules, and replace them in existing ones. Statutes and rules remain valid if preferred terms are not used. *See* new Chapter 392, Gov't Code.

**HB 1829** – Effective 9/1/11.

Adds to a judge's and magistrate's authority to permit a physician to present an application for emergency detention of a person with a mental illness by secure electronic means the ability to permit the application as a secure attachment to an email. Authorizes the judge or magistrate to transmit a warrant to the applicant electronically if a digital signature is transmitted or by email if the warrant is attached as a secure document and the identifiable legal signature of the judge or magistrate is transmitted. *See* §§ 573.012, 573.022, Health & Safety Code.

**HB 1830** – Effective 6/17/11.

Authorizes statutory probate court associate judges to give notice to parties by electronic mail. *See* § 54.614, Gov't Code.

**HB 1897** - Effective 9/1/11.

Adds guardianship matters to county court at law's concurrent jurisdiction with district courts in Van Zandt County. *See* § 25.2362, Gov't Code.

**HB 1994** – Effective 6/17/11.

Creates first offender prostitution program for defendants charged with offenses in which defendant offered or agreed to hire a person to engage in sexual conduct. Requires court, if program is defendant successfully completes program and certain criteria are met, to enter order of nondisclosure as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure. *See* Chapter 169, Health and Safety Code

and § 103,0291, Gov't Code.

**HB 2109** - Effective 6/17/11.

Provides a mechanism for a resident in an assisted living facility, identified as inappropriately placed, to remain; if the required written waiver is not obtained or approved, the resident must be discharged. Permits resident to remain for 30 days following discharge. Provides for administrative penalties for facilities that do not comply. *See* §§ 247.066 and 247.068, Health & Safety Code.

**HB 2119** - Effective 6/17/11.

Requires the Texas Correctional Office on Offenders with Medical or Mental Impairments to provide certain services and programs for juveniles. *See* new § 614.0205, Health & Safety Code.

**HB 2492** - Article 1 effective 9/1/11.

(Article 2, changes to Estate Code, effective 1/1/14.)

Requires adult incapacitated children be included in determining certain aspects of decedents' estates. Included are whether to file an application for order of no administration; final approval of inventory, appraisal and list of claims; delivery of exempt property to incapacitated adult child's guardian; and payment of allowance in lieu of exempt property, and establishment of family allowance. *See* Probate Code §§ 139, 140, 143, 271-276, 286-288 and 290-292; §§ 353.051-.056, 353.101-.102, 353.104-.107, 354.001 and 451.001-.002

**HB 2609** - Effective 9/1/11.

Expands the offenses for which conviction bars employment at or by certain facilities serving the elderly or persons with disabilities. *See* § 250.006, Health & Safety Code

**HB 2759** - Effective 1/1/14.

Second half of the codification of the existing Probate Code into the new Estates Code. (The first portion, dealing primarily with decedents' estates and related matters and proceedings, was passed during the 81st Legislative Session.) Provisions of the Probate Code relating to durable powers of attorney, guardianships and other related proceedings and alternatives are included. *See*, Chapters XII and XIII, Probate Code.

**HB 2903** - Effective 9/1/11.

Requires the Health & Human Services Commission to develop and implement a program of all-inclusive care for the elderly (PACE). The Department of Aging and Disability Services shall develop and implement a coordinated plan to promote PACE program sites operating under this section; adopt policies and procedures, including operating guidelines, to ensure that caseworkers and any other appropriate department staff discuss the benefits of participating in the PACE program with long-term care clients. *See* §§ 32.053 and new 32.-531, Human Resources Code.

**HB 2973** - Effective 9/1/11.

Among other provisions, requires government entities to provide a method by which the public can participate in and comment at public meetings. *See* new Chapter 27, Civ. Prac. & Remedies Code; *see also* [GCB's Public Meetings Policy](#), section 3(b).

**HB 3342** - Effective 6/17/11.

Relates to representation of and by the state and joinder of the state in certain mental health proceedings. Requires that a petition for a writ of habeas corpus arising from a commitment order be filed in the court of appeals for the county in which the order is entered and adds a requirement of representation by the state in a hearing held under Subchapter G, Chapter 574 of the Health and Safety Code. *See* §§ 571.016, 571.0167, Health & Safety Code.

**HB 3674** - Effective 9/1/11.

Expands use of an unsworn declaration in lieu of a notarized statement, providing it is in the form set forth in the bill. *See* § 132.001, Civ. Prac. & Remedies Code.

**SB 37** - Effective 4/21/11.

Continues interagency task force on ensuring appropriate care settings for persons with disabilities until 9/1/17. *See* § 531.02441, Gov't Code.

**SB 41** - Effective 6/17/11.

Restricts use of restraints in state supported living centers to preventing injury; must discontinue as soon as risk of harm ends; may not be used as punishment. *See* new subchapter E, §§ 592.101-106, Health & Safety Code.

**SB 43** - Effective 6/17/11.

Non-substantive changes to provisions regarding civil liability of an employer or former employer of a mental health services provider who engages in sexual exploitation of a patient or former patient. *See* § 81.003, Civ. Prac. & Remedies Code.

**SB 118** – Effective 9/1/11.

Authorizes judge to order a proposed patient to receive court-ordered extended outpatient mental health services if patient has received a total of at least 60 days (rather than consecutive days) of court-ordered inpatient mental health services within the preceding 12 months. Also authorizes the judge to order extended outpatient mental health services if a patient has received court-ordered outpatient mental health services under Subtitle C, Title 7, Health and Safety Code, or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days. Requires that an application for inpatient mental health services must state that the person has received court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code, or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. *See* §§ 574.002(b), 574.035(b), Health & Safety Code.

**SB 220** – Effective 9/1/11.

Exempts volunteers who provide services to wards of the Department of Aging and Disability Services from guardianship certification requirement. When issuing a citation stating that an application for guardianship was filed, requires a court clerk to include a statement informing certain persons of their right to notice concerning the guardianship proceedings. Permits a ward or proposed ward to retain an attorney instead of accepting representation by an attorney ad litem. In a proceeding to remove a guardian for bad acts, requires the court to appoint a guardian ad litem and an attorney ad litem (or one person in the dual role, unless a conflict exists). *See* § 111.042(a) Gov't Code; § 32.02451 Human Resources Code, §§ 161.109, 161.111, 161.114, Human Resources Code; §§ 633, 670, 682, 697B, 761 Probate Code.

**SB 221** – Effective 9/1/11.

Among several amendments to laws relating to protective services for elderly and disabled persons, specifies that an emergency order authorizing protective services for an elderly or disabled person for which consent cannot be obtained expires on the earlier of the end of the 10th day after the order is rendered or the end of the 10th day after the person was removed to safer surroundings if the order was rendered after the removal of the person to safer surroundings, rather than expiring at the end of 72 hours from the time the order is rendered. Authorizes the court to extend the emergency order after notice and hearing for a period of not more than 30 days and also to extend the order a second time for not more than an additional 30 days after notice and hearing. *See* § 59.006, Fin. Code; § 411.114, Gov't Code; §

142.018, Health & Safety Code; §§ 40.0315, 48.002, 48.006, 48.053, 48.151, 48.152, 48.1522, 48.154, 48.203, 48.204, 48.208, 48.405, Hum. Res. Code.

**SB 223** - Effective 9/1/11.

Addresses program requirements and licensing rules for certain facilities and care providers, including providers under the state Medicaid program, and compliance with those requirements and rules. The bill concerns the operation of such facilities and how DADS, the entity responsible for licensing them, will ensure compliance. Provisions include: DADS must conduct an on-site survey of the facility; DADS must provide training to facilities' staff; facilities must provide updated information to DADS; DADS may consider an license applicant's compliance history; participating agencies authorized to share information regarding Medicaid fraud; DADS authorized to asses administrative penalty against person who violates Adult Day Care Act; prohibits collection of penalty if adult day care facility has corrected violation within 45 days; and requires criminal history checks for employees and applicants for employment at certain facilities serving the elderly, persons with disabilities and persons with terminal illness. *See* various sections of Govt' Code, Health & Safety Code and Human Resources Code.

**SB 293** - Effective 9/1/11.

Provides for participation in and reimbursement for telemedicine medical services, telehealth services and home telemonitoring services for certain Medicaid recipients. Health and Human Services will promulgate rules and encourage participation in these services. Describes eligible diagnosed health conditions for home telemonitoring. Permits the HHSC to discontinue if not cost effective or does not result in cost savings. Provides for expiration of home telemonitoring services as of 9/1/15. Establishes an advisory committee at HHSC. Requires report to governor, lieutenant governor and speaker of house by HHSC no later than 12/31/12. *See* §§ 531.001, 531.0216, 531.02161, new 531.02164, 531.02172, 531.02173 and new 531.02176, Gov't Code and § 153.004, Occupations Code.

**SB 462** – Effective 9/1/11.

Provides further refinements of the law regarding eligibility for expunctions. *See* Arts. 55.01, 55.02, Code of Crim. Proc.

**SB 481** – Effective 9/1/11.

Requires the court clerk to issue notice of an order removing a guardian without prior notice under certain portions of Section 761, Probate Code. Requires that the removed guardian be served not later than the seventh day after the removal order was signed. Extends the time period within which the removed guardian may file for reinstatement from 10 to 30 days. Requires that a court hold a hearing on an application for reinstatement as soon as practicable, but not later than 60 days after the removal order was signed. *See* §§ 761, 762, Probate Code.

**SB 543** – Effective 9/1/11.

Prohibits the assessment of filing fees in probate cases wherein the decedent is an “eligible decedent” who died in the “line of duty.” Eligible decedents include peace officers, probation officers, parole officers, jailers, and other similar persons. *See* Section 11B, Probate Code.

**SB 579** - Effective 9/1/11.

Limits amount of death benefit coverage written by a funeral prearrangement life insurance agent to no more than the cost of prepaid funeral benefits purchased. Exceptions in Finance Code § 154.2021 remain in place. *See* § 4054.157, Insurance Code.

**SB 605** – Effective 9/1/11. (*Filing fee effective 1/1/12.*)

Creates an appellate judicial system for the Eighth Court of Appeals District in El Paso. Requires the commissioners courts of each county in the district to set a \$5 filing fee for each civil suit filed in the

county-level courts, specifically including statutory probate courts, and district courts in the district. *See* § 22.2091, Gov't Code.

**SB 688** - Effective 9/1/11.

Makes Medicaid fraud a felony offense. Defines certain investigators for the Office of the Attorney General as law enforcement officers. Permits evidence regarding amount of loss to the Medicaid program caused by the defendant's conduct to be introduced during the punishment phase of a trial. Provides that information and materials collected pertaining to a Medicaid fraud investigation are confidential. Makes exploitation of a child, elderly or disabled individual a felony offense. Makes submission of 25 or more fraudulent Medicaid claims a felony offense. *See* §§ 12.01, 18.21, 37.07, new subdivision 3, Code of Crim. Proc.; § 531.021, Gov't Code; and §§ 22.04, new 32.53, 35A.01 and 35A.02, Penal Code.

**SB 867** - Effective 9/1/11.

State agency that administers a licensing exam must provide reasonable accommodations and adopt rules to implement, including eligibility criteria for examinees to qualify for accommodations. *See* § 54.003 (new), Occupations Code.

**SB 874** - Effective 5/9/11.

Establishes a separate provider type for prosthetic and orthotic providers for purposes of enrollment as a provider of and reimbursement under the medical assistance program. Prosthetic and orthotic providers may not be classified under the durable medical equipment provider type. *See* § 32.024, new (ff), Human Resources Code.

**SB 1196** – Effective 9/1/11.

Amends numerous provisions of the guardianship chapter, Chapter XIII, of the Probate Code, including requiring all guardianship proceedings to be filed and heard in a court exercising original probate jurisdiction and explicitly defining matters related to a guardianship proceeding for counties without a statutory probate court. Also describes guardianship jurisdiction for the various courts, clarifies certain attorney ad litem appointment issues, and replaces the five percent limit on compensation with a reasonable compensation standard. *See* Chapter XII, Probate Code.

**SB 1197** - Effective 9/1/11.

Amends various aspects relating to trusts, including forfeiture, jurisdiction, administration and taxation. In particular, Section 3 provides that notice by trustee of division of a trust into two or more separate trusts must be given to a guardian of the estate, guardian ad litem or parent, as appropriate. *See*, Property Code Chapters 112, 115 and 116.

**SB 1198** – Article 1 effective 9/1/11, except Section 37A, Probate Code takes effect 6/17/11.

(Article 2, Estates Code, takes effect 1/1/14.)

Amends Probate Code and Estates Code regarding venue, jurisdiction, heirship proceedings, notices, and independent administration. Requires case files maintained by the county clerk for each decedent's estate in which a probate proceeding has been filed to contain all affidavits in lieu of inventories, appraisements, and lists of claims. Prohibits a survivorship agreement to create a right of survivorship in community property from being inferred from the mere fact that an account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language. Makes changes relating to formalities of an agreement for a right of survivorship in community property and specifies that those changes are intended to overturn the ruling of the Texas Supreme court in *Holmes v. Beatty*, 290 S.W.3rd 852 (Tex.2009). Authorizes judge of a county court in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, if that judge requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding, to request that the statutory probate court judge be

assigned to the entire proceeding on the judge's own motion or on the motion of a party. Specifies that a statutory probate court judge assigned to an entire probate proceeding, as an alternative to a contested matter in the proceeding, has the jurisdiction and authority granted to a statutory probate court. Requires a statutory probate court judge assigned to the entire probate proceeding, on resolution of the contested matter in the proceeding, including any appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. *See* §§ 4D, 6, 6A, 6B, 6C, 6D, 8, 8A, 8B, 452, Probate Code.

**SB 1680** - Effective 9/1/11.

Adds provisions regarding evidence in prosecutions for fraud or theft involving multiple Medicare or Medicaid recipients. Permits use of depositions for witnesses under certain circumstances. Allows court to order prosecuting attorney to take the deposition of a recipient or caregiver who is the alleged victim of or witness to an offense constituting fraud or theft that involves Medicaid or Medicare benefits; depositions may be taken by video recording. Provides for reading of witness's deposition in trial under certain circumstances if witness is a recipient, or caregiver or guardian of a recipient of Medicare or Medicaid. *See* Code of Crim. Proc. §§ n32 38.46, 39.01, new 39.026 and 39.12

**SB 1733** - Effective 6/17/11

Licensing entity must adopt rules to issue a license to spouses of active duty military persons, who are currently licensed in another state, to include alternative demonstrations of competency. *See* Occupations Code § 55.004.

**First Called Session (May 31 - June 29, 2011)**

**HB 79** - Effective 1/1/12.

This bill makes numerous changes to statutory provisions regarding the operation and administration of, and practice and procedures in courts in, the judicial branch of state government. Two articles of particular interest to guardians are summarized here.

Article 4: Provides for uniform jurisdiction of and uniform general provisions for county courts at law; individual courts' provisions repealed; CCL judges must have same qualifications as district judges. For statutory probate courts: counties may self-insure; general, not individual, provisions for all SPCs; former SPC judges need 72 (reduced from 96) months of experience to qualify for appointed as visiting probate judge. *See* § 25.002, Gov't Code.

Article 6: Relates to associate judges. New general provisions covering appointment, qualifications, compensation, types of proceedings referred, powers, and judicial immunity; Statutory Probate Associate Judges are included. *See* new Chapter 54A, Gov't Code.

**SB 1** - Articles 63 and 66 effective 9/28/11.

Article 66A (regarding Estates Code) effective 1/1/14.

This is a very broad bill covering multiple aspects of state fiscal matters. Three articles of interest to guardians are covered here.

Article 63: Family Court retains jurisdiction over young adults in extended foster care, up to 21st birthday. *See* Family Code §§ 263.601, 263.602, 263.6021, 263.603 and 263.609.

Article 66: Amends provisions regarding in-state transfers of guardianship matters; transfer instead of removal; standard is best interest of ward. Amends provisions re: acceptance of out-of-state guardianship, including modifications at time of application, preference of ward added to factors and stay of Texas action if action filed in other state with jurisdiction. *See* Probate Code §§ 612-618, 892, 893, 894(b) and new 895.

Article 66A: makes same changes in Article 66, Probate Code to the new Estates Code. *See* Estates Code §§ new 619, 1253.051, 1253.053, 1253.054, 1253.102 and new 1253.151-152