

GOVERNMENT CODE
SUBTITLE J. GUARDIANSHIPS
CHAPTER 111. GUARDIANSHIP CERTIFICATION BOARD
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 111.001. DEFINITIONS. In this chapter:

(1) "Administrative director" means the administrative director of the courts as appointed by Chapter 72.

(2) "Board" means the Guardianship Certification Board.

(3) "Corporate fiduciary" has the meaning assigned by Section 601, Texas Probate Code.

(4) "Director" means the administrative officer of the board, as provided by Section 111.021.

(5) "Guardian" has the meaning assigned by Section 601, Texas Probate Code.

(6) "Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

(7) "Incapacitated person" has the meaning assigned by Section 601, Texas Probate Code.

(8) "Office of Court Administration" means the Office of Court Administration of the Texas Judicial System.

(9) "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(10) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.002. RULES. The supreme court may adopt rules consistent with this chapter, including rules governing the certification of individuals providing guardianship services.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.003. SUNSET PROVISION. The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 111.011. BOARD. (a) The Guardianship Certification Board is composed of:

(1) 11 members appointed by the supreme court; and

(2) four public members appointed by the supreme court from a list of nominees submitted by the governor.

(b) The supreme court shall appoint members under Subsection (a)(1) from the different geographical areas of this state.

(c) In making an appointment under Subsection (a)(2), the supreme court may reject one or more of the nominees on a list submitted by the governor and request a new list of different nominees.

(d) To be eligible for appointment to the board other than as a public member, an individual must have demonstrated experience working with:

(1) a guardianship program;

(2) an organization that advocates on behalf of or in the interest of elderly individuals;

(3) an organization that advocates on behalf of or in the interest of individuals with mental illness or mental retardation or individuals with physical disabilities; or

(4) incapacitated individuals.

(e) The public members of the board must be:

(1) caretakers of individuals with mental illness or mental retardation or individuals with physical disabilities; or

(2) persons who advocate on behalf of or in the interest of individuals with mental illness or mental retardation or individuals with physical disabilities.

(f) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) The members of the board serve for staggered six-year

terms, with the terms of one-third of the members expiring on February 1 of each odd-numbered year. Board members are not entitled to receive compensation or reimbursement for expenses.

(h) The board shall elect from among its members a presiding officer and other officers considered necessary.

(i) The board shall meet at least quarterly at the call of the presiding officer.

(j) Any action taken by the board must be approved by a majority vote of the members present.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.012. ADMINISTRATIVE ATTACHMENT. (a) The board is administratively attached to the Office of Court Administration.

(b) Notwithstanding any other law, the Office of Court Administration shall:

(1) provide administrative assistance, services, and materials to the board, including budget planning and purchasing;

(2) accept, deposit, and disburse money made available to the board;

(3) pay the salaries and benefits of the director;

(4) reimburse the travel expenses and other actual and necessary expenses of the director incurred in the performance of a function of the board, as provided by the General Appropriations Act; and

(5) provide the board with adequate computer equipment and support.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.013. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is certified by the board;

(2) is registered, certified, or licensed by a regulatory agency in the field of guardianship;

(3) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving money from the Office of Court Administration;

(4) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving money from the Office of Court Administration; or

(5) uses or receives a substantial amount of tangible goods, services, or funds from the Office of Court Administration.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.014. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board or may not be the director in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of guardianship; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of guardianship.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.015. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Section 111.011;

(2) does not maintain during service on the board the

qualifications required by Section 111.011;

(3) is ineligible for membership under Section 111.013 or 111.014;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the chief justice of the supreme court that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the board, who shall then notify the chief justice of the supreme court that a potential ground for removal exists.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.016. POWERS AND DUTIES OF BOARD. (a) The board is charged with the executive functions necessary to carry out the purposes of this chapter under rules adopted by the supreme court.

(b) The board shall:

(1) administer and enforce this chapter;

(2) develop and recommend proposed rules and procedures to the supreme court as necessary to implement this chapter;

(3) set the amount of each fee prescribed by Section 111.042, subject to the approval of the supreme court;

(4) establish the qualifications for obtaining certification or recertification under Section 111.042;

(5) issue certificates to individuals who meet the certification requirements of Section 111.042; and

(6) perform any other duty required by this chapter or other law.

(c) The board may appoint any necessary or proper subcommittee.

(d) The board shall maintain:

(1) a complete record of each board proceeding; and

(2) a complete record of each certification issued, renewed, suspended, or revoked under Section 111.042.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.017. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) the role and functions of the board;

(3) the current budget for the board;

(4) the results of the most recent formal audit of the board; and

(5) any applicable ethics policies adopted by the board.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.018. USE OF TECHNOLOGY. The Office of Court Administration shall research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet;

and

(B) access any service that can be provided

effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.019. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The procedures relating to alternative dispute resolution under this section must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.020. PUBLIC ACCESS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.021. DIRECTOR. (a) The administrative director shall employ a director from a list of candidates submitted by the board. The administrative director may request an additional list of candidates if the administrative director does not select any of the initial candidates recommended by the board.

(b) The list may contain the hiring preference of the board.

(c) The director is the administrative officer of the board and is charged with carrying out the duties and functions conferred on the director by the board, this subchapter, and other law.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.022. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the director.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.023. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The director shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

SUBCHAPTER C. REGULATION OF CERTAIN GUARDIANS

Sec. 111.041. STANDARDS FOR CERTAIN GUARDIANSHIPS AND ALTERNATIVES TO GUARDIANSHIP. (a) The board shall adopt minimum standards for:

(1) the provision of guardianship services or other similar but less restrictive types of assistance or services by:

(A) guardianship programs; and

(B) private professional guardians; and

(2) the provision of guardianship services by the Department of Aging and Disability Services.

(b) The board shall design the standards to protect the interests of an incapacitated person or other person needing assistance making decisions concerning the person's own welfare or financial affairs.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.042. CERTIFICATION REQUIRED FOR CERTAIN GUARDIANS. (a) To provide guardianship services in this state, the following individuals must hold a certificate issued under this section:

(1) an individual who is a private professional guardian;

(2) an individual who will provide those services to a ward of a private professional guardian or the Department of Aging and Disability Services on the guardian's or department's behalf; and

(3) an individual, other than a volunteer, who will

provide those services to a ward of a guardianship program on the program's behalf.

(b) An applicant for a certificate under this section must:

(1) apply to the board on a form prescribed by the board; and

(2) submit with the application a nonrefundable application fee in an amount determined by the board, subject to the approval of the supreme court.

(c) The supreme court may adopt rules and procedures for issuing a certificate and for renewing, suspending, or revoking a certificate issued under this section. Any rules adopted by the supreme court under this section must:

(1) ensure compliance with the standards adopted under Section 111.041;

(2) provide that the board establish qualifications for obtaining and maintaining certification;

(3) provide that the board issue certificates under this section;

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

(5) prescribe procedures for accepting complaints and conducting investigations of alleged violations of the minimum standards adopted under Section 111.041 or other terms of the certification by certificate holders; and

(6) prescribe procedures by which the board, after notice and hearing, may suspend or revoke the certificate of a holder who fails to substantially comply with appropriate standards or other terms of the certification.

(d) If the requirements for issuing a certificate under this section include passage of an examination covering guardianship education requirements:

(1) the board shall develop and the director shall administer the examination; or

(2) the board shall direct the director to contract with another person or entity the board determines has the expertise and resources to develop and administer the examination.

(e) In lieu of the certification requirements imposed under this section, the board may issue a certificate to an individual to engage in business as a guardian or to provide guardianship services in this state if the individual:

(1) submits an application to the board in the form prescribed by the board;

(2) pays a fee in a reasonable amount determined by the board, subject to the approval of the supreme court;

(3) is certified, registered, or licensed as a guardian by a national organization or association the board determines has requirements at least as stringent as those prescribed by the board under this subchapter; and

(4) is in good standing with the organization or association with whom the person is licensed, certified, or registered.

(f) An employee of the Department of Aging and Disability Services who is applying for a certificate under this section to provide guardianship services to a ward of the department is exempt from payment of an application fee required by this section.

(g) An application fee or other fee collected under this section shall be deposited to the credit of the guardianship certification account in the general revenue fund and may be appropriated only to the Office of Court Administration for the administration and enforcement of this chapter.

(h) The Texas Department of Licensing and Regulation shall advise and assist the board as necessary in administering the certification process established under this section.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.

Sec. 111.043. INFORMATION FROM PRIVATE PROFESSIONAL GUARDIANS. In addition to the information submitted under Section 697(e), Texas Probate Code, the director may require a private professional guardian or a person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian to submit information considered necessary to monitor the person's compliance with the applicable standards adopted under Section 111.041 or with the certification requirements of Section 111.042.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1,

2005.

Sec. 111.044. ANNUAL DISCLOSURE. Not later than January 31 of each year, each guardianship program and private professional guardian shall provide to the board a report containing for the preceding year:

(1) the total number of wards served by the guardianship program or private professional guardian, as applicable;

(2) the total amount of money received from this state for the provision of guardianship services; and

(3) the total amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services.

Added by Acts 2005, 79th Leg., ch. 268, Sec. 3.24, eff. Sept. 1, 2005.