

Senate State Affairs Committee Interim Hearing – September 14, 2016

Interim Charge: Monitor requirements for guardianships



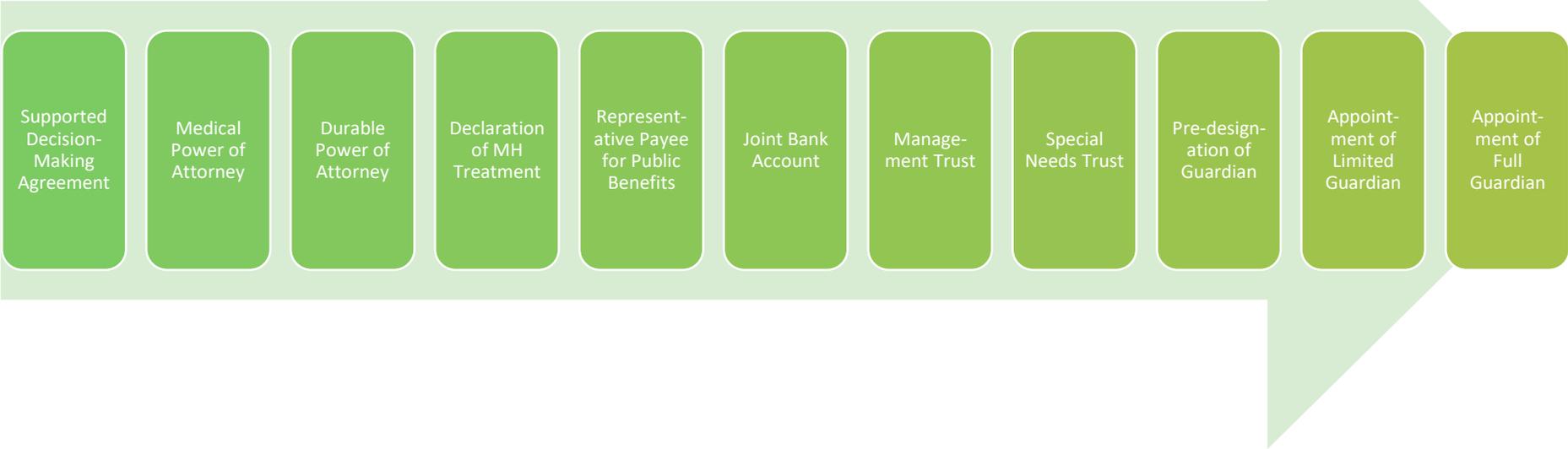
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What is Guardianship?

- Person with full or limited authority
- Over an incapacitated person as indicated by the person's actual mental or physical limitations
- Only as necessary to promote and protect the well-being of the incapacitated person
- Court is required to encourage the development and maintenance of maximum self-reliance and independence in the incapacitated person
- Persons under guardianship can lose right to make decisions about:
 - Personal care
 - Management of assets and property
 - Operation of vehicle
 - Residence
 - Voting



Continuum of Options for
Individuals with Limits in
Capacity



Jurisdiction over Guardianship

Supreme Court

Court of Appeals

District Court
(contested)

Constitutional
County Court

Statutory County
Court at Law
(92 counties)

Statutory Probate
Court
(10 counties)



Requirements to Establish Guardianship

- Application by any person
- Finding by clear & convincing evidence that:
 - Proposed ward is incapacitated
 - Best interest to have a court-appointed guardian
 - Rights and interests will be protected by guardian
 - Alternatives and supports/services are not feasible
- Find by preponderance that:
 - Person to be appointed guardian is eligible and qualified
 - Proposed ward is totally without capacity to care for him/herself & to manage property; or lacks capacity to do some, but not all, of those tasks
- Physician's Certificate of Medical Examination Required



Certified Guardians

- Attorneys, Family Members and Friends not required to be certified
- Private Professionals & DADS employees serving as guardian
 - Certified by Judicial Branch Certification Commission
 - 21 years of age
 - H.S. Graduate or GED
 - 2 years of relevant guardianship work experience **or**
 - Bachelor's Degree in relevant field, or completion of curriculum or training
 - Pass Commission-approved Exam
 - Apply for certification
 - No disqualifying criminal history
 - 2 year certification
- 463 certified or provisionally certified guardians



Guardianship Qualification Standards & Statutes

National Probate Standards	Texas Estates Code
Standard 3.3.12. Background Checks for Guardians	§1104.402 – Clerk required to obtain criminal history for all potential guardians, other than attorneys
Standard 3.3.14. Orientation, Education and Assistance for guardians	No equivalent requirement
Standard 3.3.15. Bonds for Guardians of Estate – required and in an amount equal to the liquid assets and annual income of the estate	<p>§1105.101 – Requires bond unless the guardian is a corporate fiduciary or a county guardianship program. This requirement may not be waived.</p> <p>§1105.003 – Bond must be given and approved within 21 days of order granting letters of guardianship</p> <p>§1105.154 – Amount must cover one year of revenue to the estate, plus value of the ward’s personal property</p> <p>§1105.110 - Bond must be filed with the clerk after the court approves it.</p>



Guardianship Financial Reporting Standards & Statutes

National Probate Standards	Texas Estates Code
Standard 3.3.16. Inventory and Appraisal of Assets	§1154.051 – Inventory of all property and assets must be filed within 30 days; must be approved by the judge
Standard 3.3.16. Annual Accounting Reports	<p>§1163.001 – Initial Annual Account Report must be filed within 60 days of one year anniversary; must be approved by the judge</p> <p>§1163.002 – Annual Accounting Report must be filed each year thereafter; must be approved by the judge</p> <p>§1163.003 – Reports must have supporting documentation to justify accounting reports</p> <p>§1163.006 – Reports can be waived if estate produces negligible or fixed income</p> <p>§1204.101 – Final Accounting Report required upon death or restoration of ward or minor ward becomes adult</p>



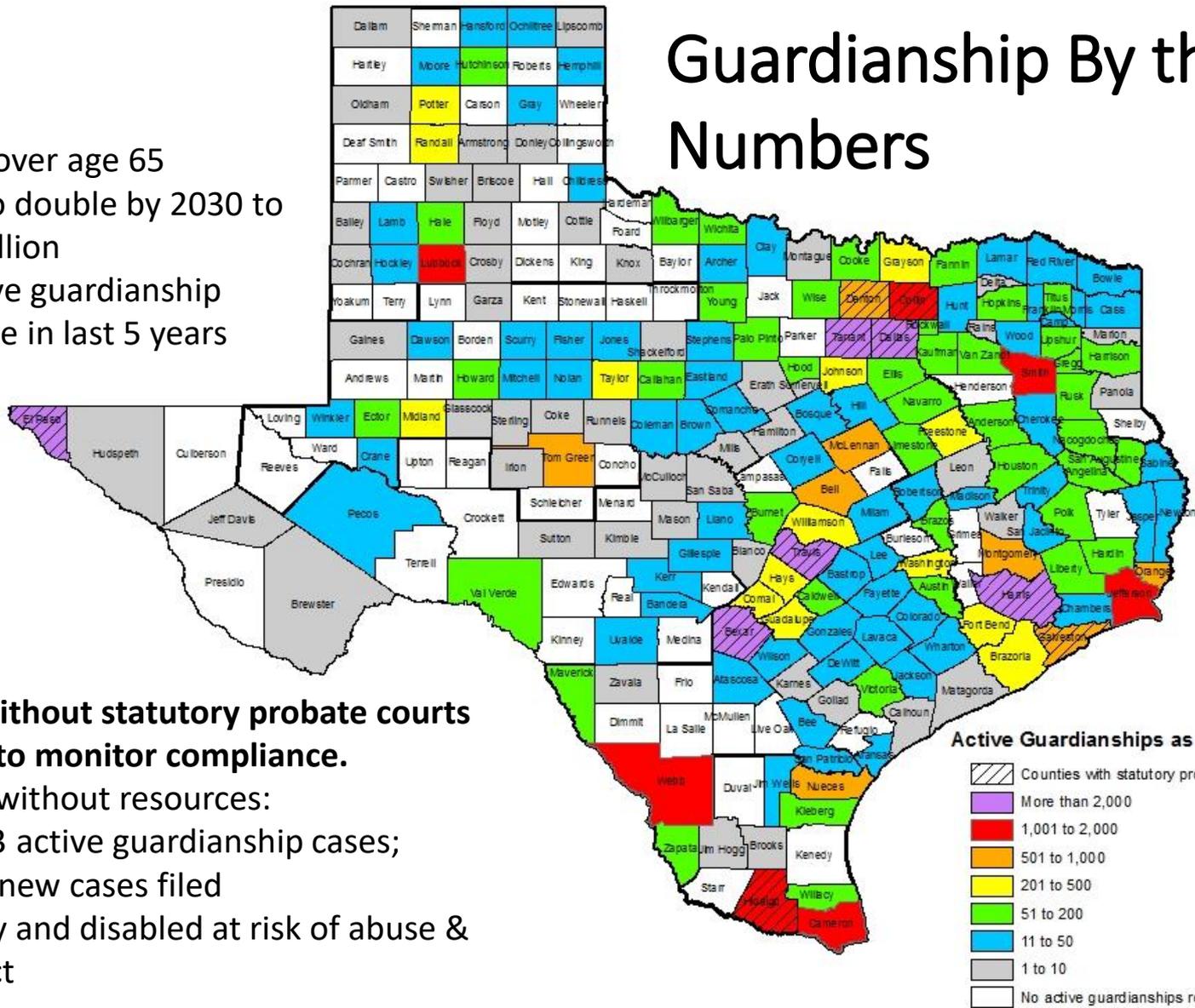
Guardianship Well-Being Reporting Standards & Statutes

National Probate Standards	Texas Estates Code
Standard 3.3.17. Monitoring Well-Being of the Ward Reports	§1163.101 – Annual Report of the person required once each year within 60 days of anniversary; must be approved by the judge
Standard 3.3.17. Further Evaluation of Guardianship	§1201.001 – Judge required to review performance of the guardian §1201.002 – Judge required to annually examine the well-being of the ward and solvency of the bond §1201.052 – Judge required to annually determine whether to continue, modify, or terminate guardianship



Guardianship By the Numbers

- Population over age 65 projected to double by 2030 to almost 6 million
- 54,492 active guardianship
- 66% increase in last 5 years



244 counties without statutory probate courts lack resources to monitor compliance.

- In counties without resources:
 - 18,443 active guardianship cases;
 - 2,439 new cases filed
 - Elderly and disabled at risk of abuse & neglect



Guardianship Compliance Pilot Project

- Partially funded by 84th Legislature
- 3 guardianship compliance specialists hired in November 2015
- Goals of project:
 - Review adult guardianship cases to identify reporting deficiencies by the guardian
 - Audit annual accountings and report findings back to the judge
 - Work with courts to develop best practices in managing guardianship cases
- Participating counties: Anderson, Bexar, Comal, Guadalupe, Hays, Montgomery, Orange, and Webb Counties
- Expansion of Pilot to Statewide Coverage to be recommended by Judicial Council



Guardianship Compliance Project Initial Findings (as of August 30, 2016)

- 5,637 cases reviewed
- 54% should not have been active
- 49% guardianship of person; 51% guardianship of estate/person
- 32% missing annual reports of person
- 45% missing initial inventory reports
- 47% missing annual accounting reports
- 25% with waived bonds
- Average estate value = \$187,498
- **Estimated amount under guardianship statewide = \$5 billion**

