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HB 457, Engrossed 3

2006 Legislature

1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.102,
3 F.S.; defining the terms "audit" and "surrogate guardian";
4 amending s. 744.1083, F.S.; revising provisions relating
5 to identification information provided by professional
6 guardians for registration; authorizing revocation or
7 suspension of a professional guardian's registration;
8 providing that the Statewide Public Guardianship Office
9 need not review credit and criminal investigations from a
10 state college or university before registering the
11 institution as a professional guardian; amending s.
12 744.301, F.S.; providing that in the event of death, the
13 surviving parent is the sole natural guardian of a minor;
14 prohibiting a natural guardian from using the property of
15 the ward for the guardian's benefit without a court order;
16 creating s. 744.3025, F.S.; authorizing a court to appoint
17 a guardian ad litem to represent a minor's interest in
18 certain claims that exceed a specified amount; requiring a
19 court to appoint a guardian ad litem to represent a
20 minor's interest in certain claims that exceed a specified
21 amount; providing that a court need not appoint a guardian
22 ad litem under certain circumstances; requiring a court to
23 award reasonable fees and costs to the guardian ad litem;
24 amending s. 744.3031, F.S.; increasing the time an
25 emergency temporary guardian may serve; increasing the
26 time of an extension; requiring an emergency temporary
27 guardian to file a final report; providing for the

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28 contents of the final report; amending s. 744.304, F.S.;

29 specifying the persons who may file a petition for a

30 standby guardian; requiring that notice of the appointment

31 hearing be served on the ward's next of kin; clarifying

32 when a standby guardian may assume the duties of guardian;

33 requiring that each standby guardian submit to credit and

34 criminal history record checks; amending s. 744.3115,

35 F.S.; defining the term "health care decision"; amending

36 s. 744.3135, F.S.; providing procedures for completing a

37 guardian's criminal history record check; authorizing a

38 guardian to use electronic fingerprinting equipment that

39 is available for criminal history record checks of public

40 employees; providing that a guardian need not be

41 rescreened if he or she uses certain electronic

42 fingerprinting equipment; providing for fees; requiring

43 the Statewide Public Guardianship Office to request that

44 the Department of Law Enforcement forward certain

45 fingerprints to the Federal Bureau of Investigation;

46 requiring the Statewide Public Guardianship Office to

47 adopt a rule for credit investigations of guardians;

48 amending s. 744.3145, F.S.; reducing the time in which a

49 guardian must complete the education courses; amending s.

50 744.3215, F.S.; providing that an incapacitated person

51 retains the right to receive services and rehabilitation

52 necessary to maximize the quality of the person's life;

53 revising provisions relating to rights that may be removed

54 from a person determined incapacitated; amending s.

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55 | 744.331, F.S.; requiring that the court appoint an
56 | attorney for an alleged incapacitated person from a
57 | specified registry; requiring attorneys to complete
58 | certain training programs; providing that a member of the
59 | examining committee may not be related to or associated
60 | with certain persons; prohibiting a person who served on
61 | an examining committee from being appointed as the
62 | guardian; requiring each member of an examining committee
63 | to file an affidavit stating that he or she has completed
64 | or will timely complete the mandatory training; providing
65 | for training programs; requiring each member to file a
66 | report regarding his or her examination of an alleged
67 | incapacitated person; providing for dismissal of a
68 | petition alleging incapacity based on the reports of the
69 | majority of the committee members; providing for an award
70 | of attorney's fees; amending s. 744.341, F.S.; requiring
71 | the voluntary guardian to include certain information in
72 | the annual report; amending s. 744.361, F.S.; requiring a
73 | professional guardian to ensure that each of his or her
74 | wards is personally visited at least quarterly; providing
75 | for the assessment of certain conditions during the
76 | personal visit; providing an exemption; amending s.
77 | 744.365, F.S.; requiring that the verified inventory
78 | include information on any trust to which a ward is a
79 | beneficiary; amending s. 744.367, F.S.; requiring that the
80 | annual report of the guardian filing on a calendar-year
81 | basis be filed on or before a specified date; exempting

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82 | all minor wards from service of the annual report;
83 | amending s. 744.3675, F.S.; requiring that the annual
84 | guardianship plan include information on the mental
85 | condition of the ward; providing for an annual
86 | guardianship plan for wards who are minors; amending s.
87 | 744.3678, F.S.; providing that property of the ward which
88 | is not under the control of the guardian, including
89 | certain trusts, is not subject to annual accounting;
90 | requiring certain documentation for the annual accounting;
91 | amending s. 744.3679, F.S.; removing a provision
92 | prohibiting the clerk of the court from having
93 | responsibility for monitoring or auditing accounts in
94 | certain cases; amending s. 744.368, F.S.; requiring that
95 | the verified inventory and the accountings be audited
96 | within a specified time period; amending s. 744.441, F.S.;
97 | requiring the court to retain oversight for assets of a
98 | ward transferred to a trust; creating s. 744.442, F.S.;
99 | providing that a guardian may designate a surrogate
100 | guardian to exercise the powers of the guardian if the
101 | guardian is unavailable to act; requiring the surrogate
102 | guardian to be a professional guardian; providing the
103 | procedures to be used in appointing a surrogate guardian;
104 | providing the duties of a surrogate guardian; requiring
105 | the guardian to be liable for the acts of the surrogate
106 | guardian; authorizing the guardian to terminate the
107 | services of the surrogate guardian by filing a written
108 | notice of the termination with the court; amending s.

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109 744.464, F.S.; removing the state attorney from the list
110 of persons to be served a notice of a hearing on
111 restoration of capacity; removing a time limitation on the
112 filing of a suggestion of capacity; amending s. 744.474,
113 F.S.; revising provisions relating to removal of a
114 guardian who is not a family member; revising provisions
115 relating to removal of a guardian upon a showing that
116 removal of the current guardian is in the best interest of
117 the ward; amending s. 744.511, F.S.; providing that a ward
118 who is a minor need not be served with the final report of
119 a removed guardian; amending s. 744.527, F.S.; providing
120 that final reports for a deceased ward be filed at a
121 specified time; amending s. 744.528, F.S.; providing for a
122 notice of the hearing for objections to a report filed by
123 a guardian; amending s. 744.708, F.S.; revising provisions
124 relating to audits and investigations of each office of
125 public guardian; requiring a public guardian to ensure
126 that each of his or her wards is personally visited at
127 least quarterly; providing for the assessment of certain
128 conditions during the personal visit; providing for
129 additional distribution of a specified annual report;
130 deleting a definition; amending s. 765.101, F.S.;
131 redefining the term "health care decision" to include
132 informed consent for mental health treatment services;
133 amending ss. 121.091, 121.4501, 709.08, and 744.1085,
134 F.S.; conforming cross-references; reenacting s.
135 117.107(4), F.S., relating to prohibited acts of a notary

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136 public, to incorporate the amendment made to s. 744.3215,
 137 F.S., in a reference thereto; providing an effective date.
 138

139 Be It Enacted by the Legislature of the State of Florida:
 140

141 Section 1. Section 744.102, Florida Statutes, is amended
 142 to read:

143 744.102 Definitions.--As used in this chapter, the term:

144 (1) "Attorney for the alleged incapacitated person" means
 145 an attorney who represents the alleged incapacitated person. The
 146 ~~Such~~ attorney shall represent the expressed wishes of the
 147 alleged incapacitated person to the extent it is consistent with
 148 the rules regulating The Florida Bar.

149 (2) "Audit" means a systematic review of financial and all
 150 other documents to ensure compliance with s. 744.368, rules of
 151 court, and local procedures using generally accepted accounting
 152 principles.

153 (3)~~(2)~~ "Clerk" means the clerk or deputy clerk of the
 154 court.

155 (4)~~(3)~~ "Corporate guardian" means a corporation authorized
 156 to exercise fiduciary or guardianship powers in this state and
 157 includes a nonprofit corporate guardian.

158 (5)~~(4)~~ "Court" means the circuit court.

159 (6)~~(5)~~ "Court monitor" means a person appointed by the
 160 court under ~~pursuant to~~ s. 744.107 to provide the court with
 161 information concerning a ward.

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162 (7)~~(6)~~ "Estate" means the property of a ward subject to
163 administration.

164 (8)~~(7)~~ "Foreign guardian" means a guardian appointed in
165 another state or country.

166 (9)~~(8)~~ "Guardian" means a person who has been appointed by
167 the court to act on behalf of a ward's person or property, or
168 both.

169 (a) "Limited guardian" means a guardian who has been
170 appointed by the court to exercise the legal rights and powers
171 specifically designated by court order entered after the court
172 has found that the ward lacks the capacity to do some, but not
173 all, of the tasks necessary to care for his or her person or
174 property, or after the person has voluntarily petitioned for
175 appointment of a limited guardian.

176 (b) "Plenary guardian" means a person who has been
177 appointed by the court to exercise all delegable legal rights
178 and powers of the ward after the court has found that the ward
179 lacks the capacity to perform all of the tasks necessary to care
180 for his or her person or property.

181 (10)~~(9)~~ "Guardian ad litem" means a person who is
182 appointed by the court having jurisdiction of the guardianship
183 or a court in which a particular legal matter is pending to
184 represent a ward in that proceeding.

185 (11)~~(10)~~ "Guardian advocate" means a person appointed by a
186 written order of the court to represent a person with
187 developmental disabilities under s. 393.12. As used in this
188 chapter, the term does not apply to a guardian advocate

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189 appointed for a person determined incompetent to consent to
 190 treatment under s. 394.4598.

191 (12)~~(11)~~ "Incapacitated person" means a person who has
 192 been judicially determined to lack the capacity to manage at
 193 least some of the property or to meet at least some of the
 194 essential health and safety requirements of the ~~such~~ person.

195 (a) To "manage property" means to take those actions
 196 necessary to obtain, administer, and dispose of real and
 197 personal property, intangible property, business property,
 198 benefits, and income.

199 (b) To "meet essential requirements for health or safety"
 200 means to take those actions necessary to provide the health
 201 care, food, shelter, clothing, personal hygiene, or other care
 202 without which serious and imminent physical injury or illness is
 203 more likely than not to occur.

204 (13)~~(12)~~ "Minor" means a person under 18 years of age
 205 whose disabilities have not been removed by marriage or
 206 otherwise.

207 (14)~~(13)~~ "Next of kin" means those persons who would be
 208 heirs at law of the ward or alleged incapacitated person if the
 209 ~~such~~ person were deceased and includes the lineal descendants of
 210 the ~~such~~ ward or alleged incapacitated person.

211 (15)~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
 212 corporation organized for religious or charitable purposes and
 213 existing under the laws of this state.

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214 ~~(16)-(15)~~ "Preneed guardian" means a person named in a
 215 written declaration to serve as guardian in the event of the
 216 incapacity of the declarant as provided in s. 744.3045.

217 ~~(17)-(16)~~ "Professional guardian" means any guardian who
 218 ~~receives or has at any time received compensation for services~~
 219 rendered services to three or more ~~than two~~ wards as their
 220 guardian. A person serving as a guardian for two or more
 221 relatives as defined in s. 744.309(2) is not considered a
 222 professional guardian. A public guardian shall be considered a
 223 professional guardian for purposes of regulation, education, and
 224 registration.

225 ~~(18)-(17)~~ "Property" means both real and personal property
 226 or any interest in it and anything that may be the subject of
 227 ownership.

228 ~~(19)-(18)~~ "Standby guardian" means a person empowered to
 229 assume the duties of guardianship upon the death or adjudication
 230 of incapacity of the last surviving natural or appointed
 231 guardian.

232 ~~(20)~~ "Surrogate guardian" means a guardian designated
 233 according to s. 744.442.

234 ~~(21)-(19)~~ "Totally incapacitated" means incapable of
 235 exercising any of the rights enumerated in s. 744.3215(2) and
 236 (3).

237 ~~(22)-(20)~~ "Ward" means a person for whom a guardian has
 238 been appointed.

239 Section 2. Subsections (3), (5), (7), and (10) of section
 240 744.1083, Florida Statutes, are amended to read:

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241 744.1083 Professional guardian registration.--

242 (3) Registration must include the following:

243 (a) Sufficient information to identify the professional

244 guardian, as follows:

245 1. If the professional guardian is a natural person, the

246 name, address, date of birth, and employer identification or

247 social security number of the person ~~professional guardian.~~

248 2. ~~(b)~~ If the professional guardian is a partnership or

249 association, the name, address, and ~~date of birth of every~~

250 ~~member, and the~~ employer identification number of the entity

251 ~~partnership or association.~~

252 ~~(c) If the professional guardian is a corporation, the~~

253 ~~name, address, and employer identification number of the~~

254 ~~corporation; the name, address, and date of birth of each of its~~

255 ~~directors and officers; the name of its resident agent; and the~~

256 ~~name, address, and date of birth of each person having at least~~

257 ~~a 10-percent interest in the corporation.~~

258 ~~(d) The name, address, date of birth, and employer~~

259 ~~identification number, if applicable, of each person providing~~

260 ~~guardian-delegated financial or personal guardianship services~~

261 ~~for wards.~~

262 (b) ~~(e)~~ Documentation that the bonding and educational

263 requirements of s. 744.1085 have been met.

264 (c) ~~(f)~~ Sufficient information to distinguish a guardian

265 providing guardianship services as a public guardian,

266 individually, through partnership, corporation, or any other

267 business organization.

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268 (5) The executive director of the office may deny
269 registration to a professional guardian if the executive
270 director determines that the guardian's proposed registration,
271 including the guardian's credit or criminal investigations,
272 indicates that registering the professional guardian would
273 violate any provision of this chapter. If a guardian who is
274 currently registered with the office violates a provision of
275 this chapter, the executive director of the office may suspend
276 or revoke the guardian's registration. If the executive director
277 denies registration to a professional guardian or suspends or
278 revokes a professional guardian's registration, the Statewide
279 Public Guardianship Office must send written notification of the
280 denial, suspension, or revocation to the chief judge of each
281 judicial circuit in which the guardian was serving on the day of
282 the office's decision to deny, suspend, or revoke the
283 registration.

284 (7) A trust company, a state banking corporation or state
285 savings association authorized and qualified to exercise
286 fiduciary powers in this state, or a national banking
287 association or federal savings and loan association authorized
288 and qualified to exercise fiduciary powers in this state, may,
289 but is not required to, register as a professional guardian
290 under this section. If a trust company, state banking
291 corporation, state savings association, national banking
292 association, or federal savings and loan association described
293 in this subsection elects to register as a professional guardian
294 under this subsection, the requirements of subsections (3) and

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295 (4) do not apply and the registration must include only the
 296 name, address, and employer identification number of the
 297 registrant, the name and address of its registered agent, if
 298 any, and the documentation described in paragraph (3) (b) ~~(e)~~.

299 (10) A state college or university or an independent
 300 college or university described in s. 1009.98(3)(a), may, but is
 301 not required to, register as a professional guardian under this
 302 section. If a state college or university or independent college
 303 or university elects to register as a professional guardian
 304 under this subsection, the requirements of subsections (3) and
 305 (4) ~~subsection (3)~~ do not apply and the registration must
 306 include only the name, address, and employer identification
 307 number of the registrant.

308 Section 3. Section 744.301, Florida Statutes, is amended
 309 to read:

310 744.301 Natural guardians.--

311 (1) The mother and father jointly are natural guardians of
 312 their own children and of their adopted children, during
 313 minority. If one parent dies, the surviving parent remains the
 314 sole natural guardian even if he or she ~~the natural guardianship~~
 315 ~~shall pass to the surviving parent, and the right shall continue~~
 316 ~~even though the surviving parent remarries.~~ If the marriage
 317 between the parents is dissolved, the natural guardianship
 318 belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
 319 child is awarded. If the parents are given joint custody, then
 320 both ~~shall~~ continue as natural guardians. If the marriage is
 321 dissolved and neither the father nor the mother is given custody

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322 of the child, neither shall act as natural guardian of the
 323 child. The mother of a child born out of wedlock is the natural
 324 guardian of the child and is entitled to primary residential
 325 care and custody of the child unless a court of competent
 326 jurisdiction enters an order stating otherwise.

327 (2) ~~The Natural guardian or~~ guardians are authorized, on
 328 behalf of any of their minor children, to:

329 (a) Settle and consummate a settlement of any claim or
 330 cause of action accruing to any of their minor children for
 331 damages to the person or property of any of said minor children;

332 (b) Collect, receive, manage, and dispose of the proceeds
 333 of any such settlement;

334 (c) Collect, receive, manage, and dispose of any real or
 335 personal property distributed from an estate or trust;

336 (d) Collect, receive, manage, and dispose of and make
 337 elections regarding the proceeds from a life insurance policy or
 338 annuity contract payable to, or otherwise accruing to the
 339 benefit of, the child; and

340 (e) Collect, receive, manage, dispose of, and make
 341 elections regarding the proceeds of any benefit plan as defined
 342 by s. 710.102, of which the minor is a beneficiary, participant,
 343 or owner,

344
 345 without appointment, authority, or bond, when the amounts
 346 received, in the aggregate, do ~~amount involved in any instance~~
 347 ~~does~~ not exceed \$15,000.

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348 (3) All instruments executed by a natural guardian for the
349 benefit of the ward under the powers specified ~~provided for~~ in
350 subsection (2) shall be binding on the ward. The natural
351 guardian may not, without a court order, use the property of the
352 ward for the guardian's benefit or to satisfy the guardian's
353 support obligation to the ward.

354 ~~(4) (a) In any case where a minor has a claim for personal~~
355 ~~injury, property damage, or wrongful death in which the gross~~
356 ~~settlement for the claim of the minor exceeds \$15,000, the court~~
357 ~~may, prior to the approval of the settlement of the minor's~~
358 ~~claim, appoint a guardian ad litem to represent the minor's~~
359 ~~interests. In any case in which the gross settlement involving a~~
360 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~
361 ~~approval of the settlement of the minor's claim, appoint a~~
362 ~~guardian ad litem to represent the minor's interests. The~~
363 ~~appointment of the guardian ad litem must be without the~~
364 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
365 ~~is to protect the minor's interests. The procedure for carrying~~
366 ~~out that duty is as prescribed in the Florida Probate Rules. If~~
367 ~~a legal guardian of the minor has previously been appointed and~~
368 ~~has no potential adverse interest to the minor, the court may~~
369 ~~not appoint a guardian ad litem to represent the minor's~~
370 ~~interests, unless the court determines that the appointment is~~
371 ~~otherwise necessary.~~

372 ~~(b) Unless waived, the court shall award reasonable fees~~
373 ~~and costs to the guardian ad litem to be paid out of the gross~~
374 ~~proceeds of the settlement.~~

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375 Section 4. Section 744.3025, Florida Statutes, is created
376 to read:

377 744.3025 Claims of minors.--

378 (1) (a) The court may appoint a guardian ad litem to
379 represent the minor's interest before approving a settlement of
380 the minor's portion of the claim in any case in which a minor
381 has a claim for personal injury, property damage, wrongful
382 death, or other cause of action in which the gross settlement of
383 the claim exceeds \$15,000.

384 (b) The court shall appoint a guardian ad litem to
385 represent the minor's interest before approving a settlement of
386 the minor's claim in any case in which the gross settlement
387 involving a minor equals or exceeds \$50,000.

388 (c) The appointment of the guardian ad litem must be
389 without the necessity of bond or notice.

390 (d) The duty of the guardian ad litem is to protect the
391 minor's interests as described in the Florida Probate Rules.

392 (e) A court need not appoint a guardian ad litem for the
393 minor if a guardian of the minor has previously been appointed
394 and that guardian has no potential adverse interest to the
395 minor. A court may appoint a guardian ad litem if the court
396 believes a guardian ad litem is necessary to protect the
397 interests of the minor.

398 (2) Unless waived, the court shall award reasonable fees
399 and costs to the guardian ad litem to be paid out of the gross
400 proceeds of the settlement.

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401 Section 5. Subsection (3) of section 744.3031, Florida
 402 Statutes, is amended, and subsection (8) is added to that
 403 section, to read:

404 744.3031 Emergency temporary guardianship.--

405 (3) The authority of an emergency temporary guardian
 406 expires 90 ~~60~~ days after the date of appointment or when a
 407 guardian is appointed, whichever occurs first. The authority of
 408 the emergency temporary guardian may be extended for an
 409 additional 90 ~~30~~ days upon a showing that the emergency
 410 conditions still exist.

411 (8) (a) An emergency temporary guardian shall file a final
 412 report no later than 30 days after the expiration of the
 413 emergency temporary guardianship.

414 (b) If an emergency temporary guardian is a guardian for
 415 the property, the final report must consist of a verified
 416 inventory of the property, as provided in s. 744.365, as of the
 417 date the letters of emergency temporary guardianship were
 418 issued, a final accounting that gives a full and correct account
 419 of the receipts and disbursements of all the property of the
 420 ward over which the guardian had control, and a statement of the
 421 property of the ward on hand at the end of the emergency
 422 temporary guardianship. If the emergency temporary guardian
 423 becomes the successor guardian of the property, the final report
 424 must satisfy the requirements of the initial guardianship report
 425 for the guardian of the property as provided in s. 744.362.

426 (c) If the emergency temporary guardian is a guardian of
 427 the person, the final report must summarize the activities of

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428 the temporary guardian with regard to residential placement,
 429 medical condition, mental health and rehabilitative services,
 430 and the social condition of the ward to the extent of the
 431 authority granted to the temporary guardian in the letters of
 432 guardianship. If the emergency temporary guardian becomes the
 433 successor guardian of the person, the report must satisfy the
 434 requirements of the initial report for a guardian of the person
 435 as stated in s. 744.362.

436 (d) A copy of the final report of the emergency temporary
 437 guardianship shall be served on the successor guardian and the
 438 ward.

439 Section 6. Section 744.304, Florida Statutes, is amended
 440 to read:

441 744.304 Standby guardianship.--

442 (1) Upon a petition by the natural guardians or a guardian
 443 appointed under s. 744.3021, the court may appoint a standby
 444 guardian of the person or property of a minor ~~or consent of both~~
 445 ~~parents, natural or adoptive, if living, or of the surviving~~
 446 ~~parent, a standby guardian of the person or property of a minor~~
 447 ~~may be appointed by the court.~~ The court may also appoint an
 448 alternate to the guardian to act if the standby guardian does
 449 not serve or ceases to serve after appointment. Notice of a
 450 hearing on the petition must be served on the parents, natural
 451 or adoptive, and on any guardian currently serving unless the
 452 notice is waived in writing by them or waived by the court for
 453 good cause shown ~~shall renounce, die, or become incapacitated~~
 454 ~~after the death of the last surviving parent of the minor.~~

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455 (2) Upon petition of a currently serving guardian, a
456 standby guardian of the person or property of an incapacitated
457 person may be appointed by the court. Notice of the hearing
458 shall be served on the ward's next of kin.

459 (3) The standby guardian or alternate shall be empowered
460 to assume the duties of guardianship ~~his or her office~~
461 immediately on the death, removal, or resignation of the
462 guardian of a minor, or on the death or adjudication of
463 incapacity of the last surviving natural guardian ~~or adoptive~~
464 ~~parent~~ of a minor, or upon the death, removal, or resignation of
465 the guardian for an adult. ~~The, however, such a~~ guardian of the
466 ward's property may not be empowered to deal with the ward's
467 property, other than to safeguard it, before ~~prior to~~ issuance
468 of letters of guardianship. If the ward ~~incapacitated person~~ is
469 over the age of 18 years, the court shall conduct a hearing as
470 provided in s. 744.331 before confirming the appointment of the
471 standby guardian, unless the ward has previously been found to
472 be incapacitated.

473 (4) Within 20 days after assumption of duties as guardian,
474 a standby guardian shall petition for confirmation of
475 appointment. If the court finds the standby guardian to be
476 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
477 744.312, appointment of the guardian must be confirmed. Each
478 guardian so confirmed shall file an oath in accordance with s.
479 744.347, ~~and~~ shall file a bond, and shall submit to a credit and
480 a criminal history record check as set forth in s. 744.3135, if

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481 required. Letters of guardianship must then be issued in the
 482 manner provided in s. 744.345.

483 (5) After the assumption of duties by a standby guardian,
 484 the court shall have jurisdiction over the guardian and the
 485 ward.

486 Section 7. Section 744.3115, Florida Statutes, is amended
 487 to read:

488 744.3115 Advance directives for health care.--In each
 489 proceeding in which a guardian is appointed under this chapter,
 490 the court shall determine whether the ward, prior to incapacity,
 491 has executed any valid advance directive under ~~pursuant to~~
 492 chapter 765. If any ~~such~~ advance directive exists, the court
 493 shall specify in its order and letters of guardianship what
 494 authority, if any, the guardian shall exercise over the
 495 surrogate. Pursuant to the grounds listed in s. 765.105, the
 496 court, upon its own motion, may, with notice to the surrogate
 497 and any other appropriate parties, modify or revoke the
 498 authority of the surrogate to make health care decisions for the
 499 ward. For purposes of this section, the term "health care
 500 decision" has the same meaning as in s. 765.101.

501 Section 8. Section 744.3135, Florida Statutes, is amended
 502 to read:

503 744.3135 Credit and criminal investigation.--

504 (1) The court may require a nonprofessional guardian and
 505 shall require a professional or public guardian, and all
 506 employees of a professional guardian who have a fiduciary
 507 responsibility to a ward, to submit, at their own expense, to an

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508 investigation of the guardian's credit history and to undergo
509 level 2 background screening as required under s. 435.04. If a
510 credit or criminal history record check is required, the court
511 must consider the results of any investigation before appointing
512 a guardian. At any time, the court may require a guardian or the
513 guardian's employees to submit to an investigation of the
514 person's credit history and complete a level 1 background
515 screening as set forth in s. 435.03. The court shall consider
516 the results of any investigation when reappointing a guardian.
517 The clerk of the court shall maintain a file on each guardian
518 appointed by the court and retain in the file documentation of
519 the result of any investigation conducted under this section. A
520 professional guardian must pay the clerk of the court a fee of
521 up to \$7.50 for handling and processing professional guardian
522 files.

523 (2) The court and the Statewide Public Guardianship Office
524 shall accept the satisfactory completion of a criminal history
525 record check by any method described in this subsection. A
526 guardian satisfies the requirements of this section by
527 undergoing:

528 (a) An electronic fingerprint criminal history record
529 check. A guardian may use any electronic fingerprinting
530 equipment used for criminal history record checks of public
531 employees. The guardian shall pay the actual costs incurred by
532 the Federal Bureau of Investigation and the Department of Law
533 Enforcement for the criminal history record check. The agency
534 that operates the equipment used by the guardian may charge the

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535 guardian an additional fee, not to exceed \$10, for the use of
536 the equipment. The agency completing the record check must
537 immediately send the results of the criminal history record
538 check to the clerk of the court and the Statewide Public
539 Guardianship Office. The clerk of the court shall maintain the
540 results in the guardian's file and shall make the results
541 available to the court; or

542 (b) A criminal history record check using a fingerprint
543 card. The clerk of the court shall obtain fingerprint cards from
544 the Federal Bureau of Investigation and make them available to
545 guardians. Any guardian who is so required shall have his or her
546 fingerprints taken and forward the proper fingerprint card along
547 with the necessary fee to the Florida Department of Law
548 Enforcement for processing. The professional guardian shall pay
549 to the clerk of the court a fee of up to \$7.50 for handling and
550 processing professional guardian files. The results of the
551 fingerprint card criminal history record checks shall be
552 forwarded to the clerk of the court who shall maintain the
553 results in the guardian's a guardian file and shall make the
554 results available to the court and the Statewide Public
555 Guardianship Office.

556 (3) (a) A professional guardian, and each employee of a
557 professional guardian who has a fiduciary responsibility to a
558 ward, must complete, at his or her own expense, a level 2
559 background screening as set forth in s. 435.04 before and at
560 least once every 5 years after the date the guardian is
561 appointed. A professional guardian, and each employee of a

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562 professional guardian who has a fiduciary responsibility to a
563 ward, must complete, at his or her own expense, a level 1
564 background screening as set forth in s. 435.03 at least once
565 every 2 years after the date the guardian is appointed. However,
566 a person is not required to resubmit fingerprints for a criminal
567 history record check if he or she has been screened using
568 electronic fingerprinting equipment and the fingerprints are
569 retained by the Department of Law Enforcement in order to notify
570 the clerk of the court of any crime charged against the person
571 in this state or elsewhere, as appropriate.

572 (b) Effective December 15, 2006, all fingerprints
573 electronically submitted to the Department of Law Enforcement
574 under this section shall be retained by the Department of Law
575 Enforcement in a manner provided by rule and entered in the
576 statewide automated fingerprint identification system authorized
577 by s. 943.05(2)(b). The fingerprints shall thereafter be
578 available for all purposes and uses authorized for arrest
579 fingerprint cards entered in the Criminal Justice Information
580 Program under s. 943.051.

581 (c) Effective December 15, 2006, the Department of Law
582 Enforcement shall search all arrest fingerprint cards received
583 under s. 943.051 against the fingerprints retained in the
584 statewide automated fingerprint identification system under
585 paragraph (b). Any arrest record that is identified with the
586 fingerprints of a person described in this paragraph must be
587 reported to the clerk of court. The clerk of court must forward
588 any arrest record received for a professional guardian to the

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589 Statewide Public Guardianship Office within 5 days. Each
590 guardian who elects to submit fingerprint information
591 electronically shall participate in this search process by
592 paying an annual fee to the Statewide Public Guardianship Office
593 of the Department of Elderly Affairs and by informing the clerk
594 of court and the Statewide Public Guardianship Office of any
595 change in the status of his or her guardianship appointment. The
596 amount of the annual fee to be imposed for performing these
597 searches and the procedures for the retention of guardian
598 fingerprints and the dissemination of search results shall be
599 established by rule of the Department of Law Enforcement. At
600 least once every 5 years, the Statewide Public Guardianship
601 Office must request that the Department of Law Enforcement
602 forward the fingerprints maintained under this section to the
603 Federal Bureau of Investigation.

604 (4) (a) A professional guardian, and each employee of a
605 professional guardian who has a fiduciary responsibility to a
606 ward, must complete, at his or her own expense, an investigation
607 of his or her credit history before and at least once every 2
608 years after the date of the guardian's appointment.

609 (b) The Statewide Public Guardianship Office shall adopt a
610 rule detailing the acceptable methods for completing a credit
611 investigation under this section. If appropriate, the Statewide
612 Public Guardianship Office may administer credit investigations.
613 If the office chooses to administer the credit investigation,
614 the office may adopt a rule setting a fee, not to exceed \$25, to

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615 reimburse the costs associated with the administration of a
616 credit investigation.

617 (5) The Statewide Public Guardianship Office may inspect
618 at any time the results of any credit or criminal history record
619 check of a public or professional guardian conducted under this
620 section. The office shall maintain copies of the credit or
621 criminal history record check results in the guardian's
622 registration file. If the results of a credit or criminal
623 investigation of a public or professional guardian have not been
624 forwarded to the Statewide Public Guardianship Office by the
625 investigating agency, the clerk of the court shall forward
626 copies of the results of the investigations to the office upon
627 receiving them. ~~If credit or criminal investigations are~~
628 ~~required, the court must consider the results of the~~
629 ~~investigations before appointing a guardian. Professional~~
630 ~~guardians and all employees of a professional guardian who have~~
631 ~~a fiduciary responsibility to a ward, so appointed, must~~
632 ~~resubmit, at their own expense, to an investigation of credit~~
633 ~~history, and undergo level 1 background screening as required~~
634 ~~under s. 435.03, at least every 2 years after the date of their~~
635 ~~appointment. At any time, the court may require guardians or~~
636 ~~their employees to submit to an investigation of credit history~~
637 ~~and undergo level 1 background screening as required under s.~~
638 ~~435.03. The court must consider the results of these~~
639 ~~investigations in reappointing a guardian.~~

640 ~~(1) Upon receiving the results of a credit or criminal~~
641 ~~investigation of any public or professional guardian, the clerk~~

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642 ~~of the court shall forward copies of the results to the~~
 643 ~~Statewide Public Guardianship Office in order that the results~~
 644 ~~may be maintained in the guardian's registration file.~~

645 (6)~~(2)~~ The requirements of this section ~~do~~ does not apply
 646 to a professional guardian, or to the employees of a
 647 professional guardian, that ~~which~~ is a trust company, a state
 648 banking corporation or state savings association authorized and
 649 qualified to exercise fiduciary powers in this state, or a
 650 national banking association or federal savings and loan
 651 association authorized and qualified to exercise fiduciary
 652 powers in this state.

653 Section 9. Subsection (4) of section 744.3145, Florida
 654 Statutes, is amended to read:

655 744.3145 Guardian education requirements.--

656 (4) Each person appointed by the court to be a guardian
 657 must complete the required number of hours of instruction and
 658 education within 4 months ~~1 year~~ after his or her appointment as
 659 guardian. The instruction and education must be completed
 660 through a course approved by the chief judge of the circuit
 661 court and taught by a court-approved organization. Court-
 662 approved organizations may include, but are not limited to,
 663 community or junior colleges, guardianship organizations, and
 664 the local bar association or The Florida Bar.

665 Section 10. Paragraph (i) of subsection (1) and subsection
 666 (2) of section 744.3215, Florida Statutes, are amended to read:

667 744.3215 Rights of persons determined incapacitated.--

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668 (1) A person who has been determined to be incapacitated
669 retains the right:

670 (i) To receive ~~necessary~~ services and rehabilitation
671 necessary to maximize the quality of life.

672 (2) Rights that may be removed from a person by an order
673 determining incapacity but not delegated to a guardian include
674 the right:

675 (a) To marry. If the right to enter into a contract has
676 been removed, the right to marry is subject to court approval.

677 (b) To vote.

678 (c) To personally apply for government benefits.

679 (d) To have a driver's license.

680 (e) To travel.

681 (f) To seek or retain employment.

682 Section 11. Subsections (2), (3), and (4), paragraph (a)
683 of subsection (5), and subsection (7) of section 744.331,
684 Florida Statutes, are amended to read:

685 744.331 Procedures to determine incapacity.--

686 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

687 (a) When a court appoints an attorney for an alleged
688 incapacitated person, the court must appoint an attorney who is
689 included in the attorney registry compiled pursuant to ss. 27.40
690 and 27.42 by the circuit's Article V indigent services
691 committee. Appointments must be made on a rotating basis, taking
692 into consideration conflicts arising under this chapter.

693 (b) ~~(a)~~ The court shall appoint an attorney for each person
694 alleged to be incapacitated in all cases involving a petition

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695 | for adjudication of incapacity. The alleged incapacitated person
696 | may substitute her or his own attorney for the attorney
697 | appointed by the court.

698 | ~~(c)~~ Any attorney representing an alleged incapacitated
699 | person may not serve as guardian of the alleged incapacitated
700 | person or as counsel for the guardian of the alleged
701 | incapacitated person or the petitioner.

702 | (d) Effective January 1, 2007, an attorney seeking to be
703 | appointed by a court for incapacity and guardianship proceedings
704 | must have completed a minimum of 8 hours of education in
705 | guardianship. A court may waive the initial training requirement
706 | for an attorney who has served as a court-appointed attorney in
707 | incapacity proceedings or as an attorney of record for guardians
708 | for not less than 3 years.

709 | (3) EXAMINING COMMITTEE.--

710 | (a) Within 5 days after a petition for determination of
711 | incapacity has been filed, the court shall appoint an examining
712 | committee consisting of three members. One member must be a
713 | psychiatrist or other physician. The remaining members must be
714 | either a psychologist, gerontologist, another psychiatrist, or
715 | other physician, a registered nurse, nurse practitioner,
716 | licensed social worker, a person with an advanced degree in
717 | gerontology from an accredited institution of higher education,
718 | or other person who by knowledge, skill, experience, training,
719 | or education may, in the court's discretion, advise the court in
720 | the form of an expert opinion. One of three members of the
721 | committee must have knowledge of the type of incapacity alleged

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722 in the petition. Unless good cause is shown, the attending or
 723 family physician may not be appointed to the committee. If the
 724 attending or family physician is available for consultation, the
 725 committee must consult with the physician. Members of the
 726 examining committee may not be related to or associated with one
 727 another, ~~or~~ with the petitioner, with counsel for the petitioner
 728 or the proposed guardian, or with the person alleged to be
 729 totally or partially incapacitated. A member may not be employed
 730 by any private or governmental agency that has custody of, or
 731 furnishes, services or subsidies, directly or indirectly, to the
 732 person or the family of the person alleged to be incapacitated
 733 or for whom a guardianship is sought. A petitioner may not serve
 734 as a member of the examining committee. Members of the examining
 735 committee must be able to communicate, either directly or
 736 through an interpreter, in the language that the alleged
 737 incapacitated person speaks or to communicate in a medium
 738 understandable to the alleged incapacitated person if she or he
 739 is able to communicate. The clerk of the court shall send notice
 740 of the appointment to each person appointed no later than 3 days
 741 after the court's appointment.

742 (b) A person who has been appointed to serve as a member
 743 of an examining committee to examine an alleged incapacitated
 744 person may not thereafter be appointed as a guardian for the
 745 person who was the subject of the examination.

746 (c) Each person appointed to an examining committee must
 747 file an affidavit with the court stating that he or she has
 748 completed the required courses or will do so no later than 4

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749 months after his or her initial appointment. Each year, the
 750 chief judge of the circuit must prepare a list of persons
 751 qualified to be members of an examining committee.

752 (d) A member of an examining committee must complete a
 753 minimum of 4 hours of initial training. The person must complete
 754 2 hours of continuing education during each 2-year period after
 755 the initial training. The initial training and continuing
 756 education program must be developed under the supervision of the
 757 Statewide Public Guardianship Office, in consultation with the
 758 Florida Conference of Circuit Court Judges; the Elder Law and
 759 the Real Property, Probate and Trust Law sections of The Florida
 760 Bar; the Florida State Guardianship Association; and the Florida
 761 Guardianship Foundation. The court may waive the initial
 762 training requirement for a person who has served for not less
 763 than 5 years on examining committees. If a person wishes to
 764 obtain his or her continuing education on the Internet or by
 765 watching a video course, the person must first obtain the
 766 approval of the chief judge before taking an Internet or video
 767 course.

768 (e)~~(b)~~ Each member of the examining committee shall
 769 examine the person. Each~~The~~ examining committee member must
 770 ~~shall~~ determine the alleged incapacitated person's ability to
 771 exercise those rights specified in s. 744.3215. In addition to
 772 the examination, each~~the~~ examining committee member must ~~shall~~
 773 have access to, and may consider, previous examinations of the
 774 person, including, but not limited to, habilitation plans,
 775 school records, and psychological and psychosocial reports

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776 voluntarily offered for use by the alleged incapacitated person.
 777 Each member of the examining committee must ~~shall~~ submit a
 778 report within 15 days after appointment.

779 (f) ~~(e)~~ The examination of the alleged incapacitated person
 780 must include a comprehensive examination, a report of which
 781 shall be filed by each ~~the~~ examining committee member as part of
 782 his or her ~~its~~ written report. The comprehensive examination
 783 report should be an essential element, but not necessarily the
 784 only element, used in making a capacity and guardianship
 785 decision. The comprehensive examination must include, if
 786 indicated:

- 787 1. A physical examination;
- 788 2. A mental health examination; and
- 789 3. A functional assessment.

790
 791 If any of these three aspects of the examination is not
 792 indicated or cannot be accomplished for any reason, the written
 793 report must explain the reasons for its omission.

794 (g) ~~(d)~~ Each committee member's ~~The committee's~~ written
 795 report must include:

- 796 1. To the extent possible, a diagnosis, prognosis, and
 797 recommended course of treatment.

- 798 2. An evaluation of the alleged incapacitated person's
 799 ability to retain her or his rights, including, without
 800 limitation, the rights to marry; vote; contract; manage or
 801 dispose of property; have a driver's license; determine her or

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802 his residence; consent to medical treatment; and make decisions
803 affecting her or his social environment.

804 3. The results of the comprehensive examination and the
805 committee member's ~~members'~~ assessment of information provided
806 by the attending or family physician, if any.

807 4. A description of any matters with respect to which the
808 person lacks the capacity to exercise rights, the extent of that
809 incapacity, and the factual basis for the determination that the
810 person lacks that capacity.

811 5. The names of all persons present during the time the
812 committee member conducted his or her examination. If a person
813 other than the person who is the subject of the examination
814 supplies answers posed to the alleged incapacitated person, the
815 report must include the response and the name of the person
816 supplying the answer.

817 ~~6.5.~~ The signature of ~~each member of~~ the committee member
818 and the date and time the member conducted his or her
819 examination.

820 ~~(h)(e)~~ A copy of each committee member's ~~the~~ report must
821 be served on the petitioner and on the attorney for the alleged
822 incapacitated person within 3 days after the report is filed and
823 at least 5 days before the hearing on the petition.

824 (4) DISMISSAL OF PETITION.--If a majority of the examining
825 committee members conclude ~~concludes~~ that the alleged
826 incapacitated person is not incapacitated in any respect, the
827 court shall dismiss the petition.

828 (5) ADJUDICATORY HEARING.--

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829 (a) Upon appointment of the examining committee, the court
 830 shall set the date upon which the petition will be heard. The
 831 date for the adjudicatory hearing must be set no more than 14
 832 days after the filing of the reports ~~report~~ of the examining
 833 committee members, unless good cause is shown. The adjudicatory
 834 hearing must be conducted at the time and place specified in the
 835 notice of hearing and in a manner consistent with due process.

836 (7) FEES.--

837 (a) The examining committee and any attorney appointed
 838 under subsection (2) are entitled to reasonable fees to be
 839 determined by the court.

840 (b) The fees awarded under paragraph (a) shall be paid by
 841 the guardian from the property of the ward or, if the ward is
 842 indigent, by the state. The state shall have a creditor's claim
 843 against the guardianship property for any amounts paid under
 844 this section. The state may file its claim within 90 days after
 845 the entry of an order awarding attorney ad litem fees. If the
 846 state does not file its claim within the 90-day period, the
 847 state is thereafter barred from asserting the claim. Upon
 848 petition by the state for payment of the claim, the court shall
 849 enter an order authorizing immediate payment out of the property
 850 of the ward. The state shall keep a record of the ~~such~~ payments.

851 (c) If the petition is dismissed, costs and attorney's
 852 fees of the proceeding may be assessed against the petitioner if
 853 the court finds the petition to have been filed in bad faith.

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854 Section 12. Subsection (4) of section 744.341, Florida
 855 Statutes, is renumbered as subsection (5) and a new subsection
 856 (4) is added to that section to read:

857 744.341 Voluntary guardianship.--

858 (4) A guardian must include in the annual report filed
 859 with the court a certificate from a licensed physician who
 860 examined the ward not more than 90 days before the annual report
 861 is filed with the court. The certificate must certify that the
 862 ward is competent to understand the nature of the guardianship
 863 and of the ward's authority to delegate powers to the voluntary
 864 guardian.

865 Section 13. Subsection (9) is added to section 744.361,
 866 Florida Statutes, to read:

867 744.361 Powers and duties of guardian.--

868 (9) A professional guardian must ensure that each of the
 869 guardian's wards is personally visited by the guardian or one of
 870 the guardian's professional staff at least once each calendar
 871 quarter. During the personal visit, the guardian or the
 872 guardian's professional staff person shall assess:

873 (a) The ward's physical appearance and condition.

874 (b) The appropriateness of the ward's current living
 875 situation.

876 (c) The need for any additional services and the necessity
 877 for continuation of existing services, taking into consideration
 878 all aspects of social, psychological, educational, direct
 879 service, health, and personal care needs.

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881 This subsection does not apply to a professional guardian who
 882 has been appointed only as guardian of the property.

883 Section 14. Subsection (2) of section 744.365, Florida
 884 Statutes, is amended to read:

885 744.365 Verified inventory.--

886 (2) CONTENTS.--The verified inventory must include the
 887 following:

888 (a) All property of the ward, real and personal, that has
 889 come into the guardian's possession or knowledge, including a
 890 statement of all encumbrances, liens, and other secured claims
 891 on any item, any claims against the property, ~~and~~ any cause of
 892 action accruing to the ward, and any trusts of which the ward is
 893 a beneficiary.†

894 (b) The location of the real and personal property in
 895 sufficient detail so that it may be clearly identified or
 896 located.† ~~and~~

897 (c) A description of all sources of income, including,
 898 without limitation, social security benefits and pensions.

899 Section 15. Subsections (1) and (3) of section 744.367,
 900 Florida Statutes, are amended to read:

901 744.367 Duty to file annual guardianship report.--

902 (1) Unless the court requires filing on a calendar-year
 903 basis, each guardian of the person shall file with the court an
 904 annual guardianship plan within 90 days after the last day of
 905 the anniversary month the letters of guardianship were signed,
 906 and the plan must cover the coming fiscal year, ending on the
 907 last day in such anniversary month. If the court requires

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908 | calendar-year filing, the guardianship plan must be filed on or
 909 | before April 1 of each year ~~within 90 days after the end of the~~
 910 | ~~calendar year.~~

911 | (3) The annual guardianship report of a guardian of the
 912 | property must consist of an annual accounting, and the annual
 913 | report of a guardian of the person ~~of an incapacitated person~~
 914 | must consist of an annual guardianship plan. The annual report
 915 | shall be served on the ward, unless the ward is a minor ~~under~~
 916 | ~~the age of 14 years~~ or is totally incapacitated, and on the
 917 | attorney for the ward, if any. The guardian shall provide a copy
 918 | to any other person as the court may direct.

919 | Section 16. Section 744.3675, Florida Statutes, is amended
 920 | to read:

921 | 744.3675 Annual guardianship plan.--Each guardian of the
 922 | person must file with the court an annual guardianship plan
 923 | which updates information about the condition of the ward. The
 924 | annual plan must specify the current needs of the ward and how
 925 | those needs are proposed to be met in the coming year.

926 | (1) Each plan for an adult ward must, if applicable,
 927 | include:

928 | (a) Information concerning the residence of the ward,
 929 | including:

- 930 | 1. The ward's address at the time of filing the plan.†
- 931 | 2. The name and address of each place where the ward was
 932 | maintained during the preceding year.†
- 933 | 3. The length of stay of the ward at each place.†

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934 4. A statement of whether the current residential setting
 935 is best suited for the current needs of the ward, ~~and~~

936 5. Plans for ensuring during the coming year that the ward
 937 is in the best residential setting to meet his or her needs.

938 (b) Information concerning the medical and mental health
 939 conditions ~~condition~~ and treatment and rehabilitation needs of
 940 the ward, including:

941 1. A resume of any professional medical treatment given to
 942 the ward during the preceding year, ~~and~~

943 2. The report of a physician who examined the ward no more
 944 than 90 days before the beginning of the applicable reporting
 945 period. The ~~Such~~ report must contain an evaluation of the ward's
 946 condition and a statement of the current level of capacity of
 947 the ward, ~~and~~

948 3. The plan for providing ~~provision of~~ medical, mental
 949 health, and rehabilitative services in the coming year.

950 (c) Information concerning the social condition of the
 951 ward, including:

952 1. The social and personal services currently used
 953 ~~utilized~~ by the ward, ~~and~~

954 2. The social skills of the ward, including a statement of
 955 how well the ward communicates and maintains interpersonal
 956 relationships, ~~with others,~~

957 ~~3. A description of the ward's activities at communication~~
 958 ~~and visitation, and~~

959 ~~3.4.~~ 3.4. The social needs of the ward.

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960 (2) Each plan filed by the legal guardian of a minor must
 961 include:

962 (a) Information concerning the residence of the minor,
 963 including:

964 1. The minor's address at the time of filing the plan.

965 2. The name and address of each place the minor lived
 966 during the preceding year.

967 (b) Information concerning the medical and mental health
 968 conditions and treatment and rehabilitation needs of the minor,
 969 including:

970 1. A resume of any professional medical treatment given to
 971 the minor during the preceding year.

972 2. A report from the physician who examined the minor no
 973 more than 180 days before the beginning of the applicable
 974 reporting period that contains an evaluation of the minor's
 975 physical and mental conditions.

976 3. The plan for providing medical services in the coming
 977 year.

978 (c) Information concerning the education of the minor,
 979 including:

980 1. A summary of the school progress report.

981 2. The social development of the minor, including a
 982 statement of how well the minor communicates and maintains
 983 interpersonal relationships.

984 3. The social needs of the minor.

985 (3)-(2) Each plan for an adult ward must address the issue
 986 of restoration of rights to the ward and include:

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987 (a) A summary of activities during the preceding year that
 988 ~~which~~ were designed to enhance ~~increase~~ the capacity of the
 989 ward. ~~†~~

990 (b) A statement of whether the ward can have any rights
 991 restored. ~~†~~ ~~and~~

992 (c) A statement of whether restoration of any rights will
 993 be sought.

994 ~~(4)-(3)~~ The court, in its discretion, may require
 995 reexamination of the ward by a physician at any time.

996 Section 17. Subsections (2) and (3) of section 744.3678,
 997 Florida Statutes, are amended to read:

998 744.3678 Annual accounting.--

999 (2) The annual accounting must include:

1000 (a) A full and correct account of the receipts and
 1001 disbursements of all of the ward's property over which the
 1002 guardian has control and a statement of the ward's property on
 1003 hand at the end of the accounting period. This paragraph does
 1004 not apply to any property or any trust of which the ward is a
 1005 beneficiary but which is not under the control or administration
 1006 of the guardian.

1007 (b) A copy of the annual or year-end statement of all of
 1008 the ward's cash accounts from each of the institutions where the
 1009 cash is deposited.

1010 (3) The guardian must obtain a receipt, ~~or~~ canceled check,
 1011 or other proof of payment for all expenditures and disbursements
 1012 made on behalf of the ward. The guardian must preserve all
 1013 evidence of payment ~~the receipts and canceled checks~~, along with

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1014 other substantiating papers, for a period of 3 years after his
 1015 or her discharge. The receipts, proofs of payment ~~checks~~, and
 1016 substantiating papers need not be filed with the court but shall
 1017 be made available for inspection and review at the ~~such~~ time and
 1018 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~
 1019 ~~time to time~~ order.

1020 Section 18. Section 744.3679, Florida Statutes, is amended
 1021 to read:

1022 744.3679 Simplified accounting procedures in certain
 1023 cases.--

1024 (1) In a guardianship of property, when all assets of the
 1025 estate are in designated depositories under s. 69.031 and the
 1026 only transactions that occur in that account are interest
 1027 accrual, deposits from a ~~pursuant to~~ settlement, or financial
 1028 institution service charges, the guardian may elect to file an
 1029 accounting consisting of:

1030 (a) The original or a certified copy of the year-end
 1031 statement of the ward's account from the financial institution;
 1032 and

1033 (b) A statement by the guardian under penalty of perjury
 1034 that the guardian has custody and control of the ward's property
 1035 as shown in the year-end statement.

1036 ~~(2) The clerk has no responsibility to monitor or audit~~
 1037 ~~the accounts and may not accept a fee for doing so.~~

1038 (2) ~~(3)~~ The accounting allowed by subsection (1) is in lieu
 1039 of the accounting and auditing procedures under s. 744.3678(2)

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1040 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
 1041 may seek judicial review as provided in s. 744.3685.

1042 (3)~~(4)~~ The guardian need not be represented by an attorney
 1043 in order to file the annual accounting allowed by subsection
 1044 (1).

1045 Section 19. Subsection (3) of section 744.368, Florida
 1046 Statutes, is amended to read:

1047 744.368 Responsibilities of the clerk of the circuit
 1048 court.--

1049 (3) Within 90 days after the filing of the verified
 1050 inventory and accountings ~~initial or annual guardianship report~~
 1051 by a guardian of the property, the clerk shall audit the
 1052 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
 1053 clerk shall advise the court of the results of the audit.

1054 Section 20. Subsection (19) of section 744.441, Florida
 1055 Statutes, is amended to read:

1056 744.441 Powers of guardian upon court approval.--After
 1057 obtaining approval of the court pursuant to a petition for
 1058 authorization to act, a plenary guardian of the property, or a
 1059 limited guardian of the property within the powers granted by
 1060 the order appointing the guardian or an approved annual or
 1061 amended guardianship report, may:

1062 (19) Create or amend revocable trusts or create
 1063 irrevocable trusts of property of the ward's estate which may
 1064 extend beyond the disability or life of the ward in connection
 1065 with estate, gift, income, or other tax planning or in
 1066 connection with estate planning. The court shall retain

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1067 oversight of the assets transferred to a trust, unless otherwise
 1068 ordered by the court.

1069 Section 21. Section 744.442, Florida Statutes, is created
 1070 to read:

1071 744.442 Delegation of authority.--

1072 (1) A guardian may designate a surrogate guardian to
 1073 exercise the powers of the guardian if the guardian is
 1074 unavailable to act. A person designated as a surrogate guardian
 1075 under this section must be a professional guardian.

1076 (2) (a) A guardian must file a petition with the court
 1077 requesting permission to designate a surrogate guardian.

1078 (b) If the court approves the designation, the order must
 1079 specify the name and business address of the surrogate guardian
 1080 and the duration of appointment, which may not exceed 30 days.
 1081 The court may extend the appointment for good cause shown. The
 1082 surrogate guardian may exercise all powers of the guardian
 1083 unless limited by order of the court. The surrogate guardian
 1084 must file with the court an oath swearing or affirming that he
 1085 or she will faithfully perform the duties delegated. The court
 1086 may require the surrogate guardian to post a bond.

1087 (3) This section does not limit the responsibility of the
 1088 guardian to the ward and to the court. The guardian is liable
 1089 for the acts of the surrogate guardian. The guardian may
 1090 terminate the authority of the surrogate guardian by filing a
 1091 written notice of the termination with the court.

1092 (4) The surrogate guardian is subject to the jurisdiction
 1093 of the court as if appointed to serve as guardian.

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1094 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
 1095 and subsection (4) of section 744.464, Florida Statutes, are
 1096 amended to read:

1097 744.464 Restoration to capacity.--

1098 (2) SUGGESTION OF CAPACITY.--

1099 (c) The court shall immediately send notice of the filing
 1100 of the suggestion of capacity to the ward, the guardian, the
 1101 attorney for the ward, if any, ~~the state attorney,~~ and any other
 1102 interested persons designated by the court. Formal notice must
 1103 be served on the guardian. Informal notice may be served on
 1104 other persons. Notice need not be served on the person who filed
 1105 the suggestion of capacity.

1106 (e) If an objection is timely filed, or if the medical
 1107 examination suggests that full restoration is not appropriate,
 1108 the court shall set the matter for hearing. If the ward does not
 1109 have an attorney, the court shall appoint one to represent the
 1110 ward.

1111 (f) Notice of the hearing and copies of the objections and
 1112 medical examination reports shall be served upon the ward, the
 1113 ward's attorney, the guardian, ~~the state attorney,~~ the ward's
 1114 next of kin, and any other interested persons as directed by the
 1115 court.

1116 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
 1117 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
 1118 ~~capacity may not be filed within 90 days after an adjudication~~
 1119 ~~of incapacity or denial of restoration, unless good cause is~~
 1120 ~~shown.~~

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1121 Section 23. Paragraph (a) of subsection (19) of section
 1122 744.474, Florida Statutes, is amended, and paragraph (b) of that
 1123 subsection is redesignated as subsection (20) of that section
 1124 and amended, to read:

1125 744.474 Reasons for removal of guardian.--A guardian may
 1126 be removed for any of the following reasons, and the removal
 1127 shall be in addition to any other penalties prescribed by law:

1128 (19) Upon a showing by a person who did not receive notice
 1129 of the petition for adjudication of incapacity, when such notice
 1130 is required, or who is related to the ward within the
 1131 relationships specified for nonresident relatives in ss.

1132 744.309(2) and 744.312(2) and who has not previously been
 1133 rejected by the court as a guardian that+

1134 ~~(a) the current guardian is not a family member, and~~
 1135 subsection (20) applies.

1136 ~~(20)(b)~~ Upon a showing that removal of the current
 1137 guardian is in the best interest of the ward. In determining
 1138 whether a guardian who is related by blood or marriage to the
 1139 ward is to be removed, there shall be a rebuttable presumption
 1140 that the guardian is acting in the best interests of the ward,

1141 ~~the court may remove the current guardian and appoint the~~
 1142 ~~petitioner, or such person as the court deems in the best~~
 1143 ~~interest of the ward, either as guardian of the person or of the~~
 1144 ~~property, or both.~~

1146 Section 24. Section 744.511, Florida Statutes, is amended
 1147 to read:

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1148 744.511 Accounting upon removal.--A removed guardian shall
 1149 file with the court a true, complete, and final report of his or
 1150 her guardianship within 20 days after removal and shall serve a
 1151 copy on the successor guardian and the ward, unless the ward is
 1152 a minor ~~under 14 years of age~~ or has been determined to be
 1153 totally incapacitated.

1154 Section 25. Section 744.527, Florida Statutes, is amended
 1155 to read:

1156 744.527 Final reports and application for discharge;
 1157 hearing.--

1158 (1) When the court terminates the guardianship for any of
 1159 the reasons set forth in s. 744.521, the guardian shall promptly
 1160 file his or her final report. If the ward has died, the guardian
 1161 must file a final report with the court no later than 45 days
 1162 after he or she has been served with letters of administration
 1163 or letters of curatorship. If no objections are filed and if it
 1164 appears that the guardian has made full and complete
 1165 distribution to the person entitled and has otherwise faithfully
 1166 discharged his or her duties, the court shall approve the final
 1167 report. If objections are filed, the court shall conduct a
 1168 hearing in the same manner as provided for a hearing on
 1169 objections to annual guardianship reports.

1170 (2) The guardian applying for discharge may ~~is authorized~~
 1171 ~~to~~ retain from the funds in his or her possession a sufficient
 1172 amount to pay the final costs of administration, including
 1173 guardian and attorney's fees regardless of the death of the

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1174 ward, accruing between the filing of his or her final returns
 1175 and the order of discharge.

1176 Section 26. Subsection (3) of section 744.528, Florida
 1177 Statutes, is amended to read:

1178 744.528 Discharge of guardian named as personal
 1179 representative.--

1180 (3) Any interested person may file a notice of ~~The court~~
 1181 ~~shall set~~ a hearing on any objections filed by the
 1182 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
 1183 the guardian, beneficiaries of the ward's estate, and any other
 1184 person to whom the court directs service. If a notice of hearing
 1185 on the objections is not served within 90 days after filing of
 1186 the objections, the objections are deemed abandoned.

1187 Section 27. Subsections (5) through (8) of section
 1188 744.708, Florida Statutes, are amended to read:

1189 744.708 Reports and standards.--

1190 (5) (a) Each office of public guardian shall undergo an
 1191 independent audit by a qualified certified public accountant
 1192 ~~shall be performed~~ at least once every 2 years. ~~The audit should~~
 1193 ~~include an investigation into the practices of the office for~~
 1194 ~~managing the person and property of the wards.~~ A copy of the
 1195 audit report shall be submitted to the Statewide Public
 1196 Guardianship Office.

1197 (b) In addition to regular monitoring activities, the
 1198 Statewide Public Guardianship Office shall conduct an
 1199 investigation into the practices of each office of public
 1200 guardian related to the managing of each ward's personal affairs

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1201 and property. When feasible, the investigation required under
 1202 this paragraph shall be conducted in conjunction with the
 1203 financial audit of each office of public guardian under
 1204 paragraph (a).

1205 (c) In addition, each ~~the~~ office of public guardian shall
 1206 be subject to audits or examinations by the Auditor General and
 1207 the Office of Program Policy Analysis and Government
 1208 Accountability pursuant to law.

1209 (6) A ~~The~~ public guardian shall ensure that each of the
 1210 guardian's wards is personally visited ~~ward is seen~~ by the
 1211 public guardian or by one of the guardian's a professional staff
 1212 ~~person~~ at least once each calendar quarter ~~four times a year~~.

1213 During this personal visit, the public guardian or the
 1214 professional staff person shall assess:

1215 (a) The ward's physical appearance and condition.

1216 (b) The appropriateness of the ward's current living
 1217 situation.

1218 (c) The need for any additional services and the necessity
 1219 for continuation of existing services, taking into consideration
 1220 all aspects of social, psychological, educational, direct
 1221 service, health, and personal care needs.

1222 (7) The ratio for professional staff to wards shall be 1
 1223 professional to 40 wards. The Statewide Public Guardianship
 1224 Office may increase or decrease the ratio after consultation
 1225 with the local public guardian and the chief judge of the
 1226 circuit court. The basis of the decision to increase or decrease
 1227 the prescribed ratio shall be reported in the annual report to

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1228 | the Secretary of Elderly Affairs, the Governor, the President of
 1229 | the Senate, the Speaker of the House of Representatives, and the
 1230 | Chief Justice of the Supreme Court.

1231 | ~~(8) The term "professional," for purposes of this part,~~
 1232 | ~~shall not include the public guardian nor the executive director~~
 1233 | ~~of the Statewide Public Guardianship Office. The term~~
 1234 | ~~"professional" shall be limited to those persons who exercise~~
 1235 | ~~direct supervision of individual wards under the direction of~~
 1236 | ~~the public guardian.~~

1237 | Section 28. Paragraph (a) of subsection (5) of section
 1238 | 765.101, Florida Statutes, is amended to read:

1239 | 765.101 Definitions.--As used in this chapter:

1240 | (5) "Health care decision" means:

1241 | (a) Informed consent, refusal of consent, or withdrawal of
 1242 | consent to any and all health care, including life-prolonging
 1243 | procedures and mental health treatment, unless otherwise stated
 1244 | in the advance directives.

1245 | Section 29. Paragraph (c) of subsection (8) of section
 1246 | 121.091, Florida Statutes, is amended to read:

1247 | 121.091 Benefits payable under the system.--Benefits may
 1248 | not be paid under this section unless the member has terminated
 1249 | employment as provided in s. 121.021(39)(a) or begun
 1250 | participation in the Deferred Retirement Option Program as
 1251 | provided in subsection (13), and a proper application has been
 1252 | filed in the manner prescribed by the department. The department
 1253 | may cancel an application for retirement benefits when the
 1254 | member or beneficiary fails to timely provide the information

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1255 and documents required by this chapter and the department's
 1256 rules. The department shall adopt rules establishing procedures
 1257 for application for retirement benefits and for the cancellation
 1258 of such application when the required information or documents
 1259 are not received.

1260 (8) DESIGNATION OF BENEFICIARIES.--

1261 (c) Notwithstanding the member's designation of benefits
 1262 to be paid through a trust to a beneficiary that is a natural
 1263 person as provided in s. 121.021(46), and notwithstanding the
 1264 provisions of the trust, benefits shall be paid directly to the
 1265 beneficiary if the ~~such~~ person is no longer a minor or an
 1266 incapacitated person as defined in s. 744.102(~~11~~) and (~~12~~).

1267 Section 30. Paragraph (c) of subsection (20) of section
 1268 121.4501, Florida Statutes, is amended to read:

1269 121.4501 Public Employee Optional Retirement Program.--

1270 (20) DESIGNATION OF BENEFICIARIES.--

1271 (c) Notwithstanding the participant's designation of
 1272 benefits to be paid through a trust to a beneficiary that is a
 1273 natural person, and notwithstanding the provisions of the trust,
 1274 benefits shall be paid directly to the beneficiary if the ~~such~~
 1275 person is no longer a minor or an incapacitated person as
 1276 defined in s. 744.102(~~11~~) and (~~12~~).

1277 Section 31. Subsection (1) and paragraphs (b), (d), and
 1278 (f) of subsection (4) of section 709.08, Florida Statutes, are
 1279 amended to read:

1280 709.08 Durable power of attorney.--

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1281 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
 1282 power of attorney is a written power of attorney by which a
 1283 principal designates another as the principal's attorney in
 1284 fact. The durable power of attorney must be in writing, must be
 1285 executed with the same formalities required for the conveyance
 1286 of real property by Florida law, and must contain the words:
 1287 "This durable power of attorney is not affected by subsequent
 1288 incapacity of the principal except as provided in s. 709.08,
 1289 Florida Statutes"; or similar words that show the principal's
 1290 intent that the authority conferred is exercisable
 1291 notwithstanding the principal's subsequent incapacity, except as
 1292 otherwise provided by this section. The durable power of
 1293 attorney is exercisable as of the date of execution; however, if
 1294 the durable power of attorney is conditioned upon the
 1295 principal's lack of capacity to manage property as defined in s.
 1296 744.102 (12) ~~(11)~~ (a), the durable power of attorney is exercisable
 1297 upon the delivery of affidavits in paragraphs (4) (c) and (d) to
 1298 the third party.

1299 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
 1300 AFFIDAVITS.--

1301 (b) Any third party may rely upon the authority granted in
 1302 a durable power of attorney that is conditioned on the
 1303 principal's lack of capacity to manage property as defined in s.
 1304 744.102 (12) ~~(11)~~ (a) only after receiving the affidavits provided
 1305 in paragraphs (c) and (d), and such reliance shall end when the
 1306 third party has received notice as provided in subsection (5).

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1307 (d) A determination that a principal lacks the capacity to
 1308 manage property as defined in s. 744.102 (12) ~~(11)~~ (a) must be made
 1309 and evidenced by the affidavit of a physician licensed to
 1310 practice medicine pursuant to chapters 458 and 459 as of the
 1311 date of the affidavit. A judicial determination that the
 1312 principal lacks the capacity to manage property pursuant to
 1313 chapter 744 is not required prior to the determination by the
 1314 physician and the execution of the affidavit. For purposes of
 1315 this section, the physician executing the affidavit must be the
 1316 primary physician who has responsibility for the treatment and
 1317 care of the principal. The affidavit executed by a physician
 1318 must state where the physician is licensed to practice medicine,
 1319 that the physician is the primary physician who has
 1320 responsibility for the treatment and care of the principal, and
 1321 that the physician believes that the principal lacks the
 1322 capacity to manage property as defined in s. 744.102 (12) ~~(11)~~ (a).
 1323 The affidavit may, but need not, be in the following form:

1324
 1325 STATE OF _____
 1326 COUNTY OF _____

1327
 1328 Before me, the undersigned authority, personally appeared
 1329 (name of physician) , Affiant, who swore or affirmed that:
 1330 1. Affiant is a physician licensed to practice medicine in
 1331 (name of state, territory, or foreign country) .
 1332 2. Affiant is the primary physician who has responsibility
 1333 for the treatment and care of (principal's name) .

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1334 3. To the best of Affiant's knowledge after reasonable
 1335 inquiry, Affiant believes that the principal lacks the capacity
 1336 to manage property, including taking those actions necessary to
 1337 obtain, administer, and dispose of real and personal property,
 1338 intangible property, business property, benefits, and income.

1339
 1340

1341 _____
 1342 (Affiant)

1343

1344 Sworn to (or affirmed) and subscribed before me this (day
 1345 of) (month) , (year) , by (name of person making
 1346 statement)

1347

1348 (Signature of Notary Public-State of Florida)

1349

1350 (Print, Type, or Stamp Commissioned Name of Notary Public)

1351

1352 Personally Known OR Produced Identification

1353 (Type of Identification Produced)

1354 (f) A third party may not rely on the authority granted in
 1355 a durable power of attorney conditioned on the principal's lack
 1356 of capacity to manage property as defined in s.

1357 744.102 (12) ~~(11)~~ (a) when any affidavit presented has been
 1358 executed more than 6 months prior to the first presentation of
 1359 the durable power of attorney to the third party.

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1360 Section 32. Subsection (3) of section 744.1085, Florida
 1361 Statutes, is amended to read:

1362 744.1085 Regulation of professional guardians;
 1363 application; bond required; educational requirements.--

1364 (3) Each professional guardian defined in s.
 1365 744.102(17)~~(16)~~ and public guardian must receive a minimum of 40
 1366 hours of instruction and training. Each professional guardian
 1367 must receive a minimum of 16 hours of continuing education every
 1368 2 calendar years after the year in which the initial 40-hour
 1369 educational requirement is met. The instruction and education
 1370 must be completed through a course approved or offered by the
 1371 Statewide Public Guardianship Office. The expenses incurred to
 1372 satisfy the educational requirements prescribed in this section
 1373 may not be paid with the assets of any ward. This subsection
 1374 does not apply to any attorney who is licensed to practice law
 1375 in this state.

1376 Section 33. For the purpose of incorporating the amendment
 1377 made by this act to section 744.3215, Florida Statutes, in a
 1378 reference thereto, subsection (4) of section 117.107, Florida
 1379 Statutes, is reenacted to read:

1380 117.107 Prohibited acts.--

1381 (4) A notary public may not take the acknowledgment of or
 1382 administer an oath to a person whom the notary public actually
 1383 knows to have been adjudicated mentally incapacitated by a court
 1384 of competent jurisdiction, where the acknowledgment or oath
 1385 necessitates the exercise of a right that has been removed

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1386 | pursuant to s. 744.3215(2) or (3), and where the person has not
1387 | been restored to capacity as a matter of record.

1388 | Section 34. This act shall take effect July 1, 2006.