

By the Committee on Judiciary; and Senator Saunders

590-1822-06

1 A bill to be entitled

2 An act relating to guardianship; amending s.

3 744.102, F.S.; defining the terms "audit" and

4 "surrogate guardian"; amending s. 744.1083,

5 F.S.; authorizing revocation or suspension of a

6 guardian's registration; providing that the

7 Statewide Public Guardianship Office need not

8 review credit and criminal investigations from

9 a college or university before registering the

10 institution as a professional guardian;

11 amending s. 744.301, F.S.; providing that in

12 the event of death, the surviving parent is the

13 sole natural guardian of a minor; prohibiting a

14 natural guardian from using the property of the

15 ward for the guardian's benefit without a court

16 order; creating s. 744.3025, F.S.; authorizing

17 a court to appoint a guardian ad litem to

18 represent a minor's interest in certain claims

19 that exceed a specified amount; requiring a

20 court to appoint a guardian ad litem to

21 represent a minor's interest in certain claims

22 that exceed a specified amount; providing that

23 a court need not appoint a guardian ad litem

24 under certain circumstances; requiring a court

25 to award reasonable fees and costs to the

26 guardian ad litem; amending s. 744.3031, F.S.;

27 increasing the time an emergency temporary

28 guardian may serve to 90 days; authorizing an

29 extension; requiring an emergency temporary

30 guardian to file a final report; providing for

31 the contents of the final report; amending s.

1 744.304, F.S.; specifying the persons who may
2 file a petition for a standby guardian;
3 requiring that notice of the appointment
4 hearing be served on the ward's next of kin;
5 clarifying when a standby guardian may assume
6 the duties of guardian; requiring that each
7 standby guardian submit to credit and criminal
8 background checks; amending s. 744.3115, F.S.;
9 providing a cross-reference; amending s.
10 744.3145, F.S.; reducing the time in which a
11 guardian must complete the education courses
12 from 1 year to 4 months; amending s. 744.3215,
13 F.S.; providing that an incapacitated person
14 retains the right to receive necessary services
15 and rehabilitation necessary to maximize the
16 quality of the person's life; amending s.
17 744.331, F.S.; requiring that the court appoint
18 an attorney from a specified registry;
19 requiring attorneys to complete certain
20 training programs; providing that a member of
21 the examining committee may not be related to
22 or associated with certain persons; prohibiting
23 a person who served on an examining committee
24 from being appointed as the guardian; requiring
25 each member of an examining committee to file
26 an affidavit stating that he or she has
27 completed the mandatory training; providing for
28 training programs; requiring each member to
29 file a report regarding his or her examination
30 of an alleged incapacitated person; providing
31 for an award of attorney's fees; amending s.

1 744.341, F.S.; requiring the voluntary guardian
2 to include certain information in the annual
3 report; requiring that certain specified
4 information be included in the notice to
5 terminate a voluntary guardianship; amending s.
6 744.361, F.S.; requiring a professional
7 guardian to ensure that each of his or her
8 wards is personally visited at least quarterly;
9 providing for the assessment of certain
10 conditions during the personal visit; amending
11 s. 744.365, F.S.; requiring that the verified
12 inventory include information on any trust to
13 which a ward is a beneficiary; amending s.
14 744.367, F.S.; requiring that the annual report
15 of the guardian be filed on or before April 1
16 of each year; amending s. 744.3675, F.S.;
17 requiring that the annual guardianship plan
18 include information on the mental condition of
19 the ward; providing for an annual guardianship
20 plan for wards who are minors; amending s.
21 744.3678, F.S.; providing that property of or a
22 trust benefiting the ward which is not under
23 the control of the guardian is not subject to
24 annual accounting; requiring certain
25 documentation for the annual accounting;
26 amending s. 744.3679, F.S.; removing a
27 provision prohibiting the clerk of court from
28 having responsibility for monitoring or
29 auditing accounts in certain cases; amending s.
30 744.368, F.S.; requiring that the verified
31 inventory and the accountings be audited within

1 a specified time period; amending s. 744.441,
2 F.S.; providing that a guardian, with the
3 approval of the court, may amend a revocable
4 trust of the property of the ward; creating s.
5 744.442, F.S.; providing that a guardian may
6 designate a surrogate guardian to exercise the
7 powers of the guardian if the guardian is
8 unavailable to act; requiring the surrogate
9 guardian to be a professional guardian;
10 providing the procedures to be used in
11 appointing a surrogate guardian; providing the
12 duties of a surrogate guardian; requiring the
13 guardian to be liable for the acts of the
14 surrogate guardian; authorizing the guardian to
15 terminate the services of the surrogate
16 guardian by filing a written notice of the
17 termination with the court; amending s.
18 744.464, F.S.; removing the state attorney from
19 the list of persons to be served a notice of a
20 hearing on restoration of capacity; removing a
21 time limitation on the filing of a suggestion
22 of capacity; amending s. 744.474, F.S.;
23 revising the circumstances under which a
24 guardian may be removed; providing a rebuttable
25 presumption that certain relatives act in the
26 best interests of the ward; amending s.
27 744.511, F.S.; providing that a ward who is a
28 minor need not be served with the final report
29 of a removed guardian; amending s. 744.527,
30 F.S.; providing that final reports for a
31 deceased ward be filed at a specified time;

1 amending s. 744.528, F.S.; providing for a
2 notice of the hearing for objections to a
3 report filed by a guardian; amending s.
4 744.708, F.S.; requiring a public guardian to
5 ensure that each of his or her wards is
6 personally visited at least quarterly;
7 providing for the assessment of certain
8 conditions during the personal visit; amending
9 s. 765.101, F.S.; redefining the term "health
10 care decision" to include informed consent for
11 mental health treatment services; amending ss.
12 121.091, 121.4501, 709.08, and 744.1085, F.S.;
13 conforming cross-references; reenacting s.
14 117.107(4), F.S., relating to prohibited acts
15 of a notary public, to incorporate the
16 amendment made to s. 744.3215, F.S., in a
17 reference thereto; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 744.102, Florida Statutes, is
22 amended to read:

23 744.102 Definitions.--As used in this chapter, the
24 term:

25 (1) "Attorney for the alleged incapacitated person"
26 means an attorney who represents the alleged incapacitated
27 person. ~~The~~ Such attorney shall represent the expressed wishes
28 of the alleged incapacitated person to the extent it is
29 consistent with the rules regulating The Florida Bar.

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1 (2) "Audit" means a systematic review of financial
2 documents with adherence to generally accepted auditing
3 standards.

4 ~~(3)(2)~~ "Clerk" means the clerk or deputy clerk of the
5 court.

6 ~~(4)(3)~~ "Corporate guardian" means a corporation
7 authorized to exercise fiduciary or guardianship powers in
8 this state and includes a nonprofit corporate guardian.

9 ~~(5)(4)~~ "Court" means the circuit court.

10 ~~(6)(5)~~ "Court monitor" means a person appointed by the
11 court under ~~pursuant to~~ s. 744.107 to provide the court with
12 information concerning a ward.

13 ~~(7)(6)~~ "Estate" means the property of a ward subject
14 to administration.

15 ~~(8)(7)~~ "Foreign guardian" means a guardian appointed
16 in another state or country.

17 ~~(9)(8)~~ "Guardian" means a person who has been
18 appointed by the court to act on behalf of a ward's person or
19 property, or both.

20 (a) "Limited guardian" means a guardian who has been
21 appointed by the court to exercise the legal rights and powers
22 specifically designated by court order entered after the court
23 has found that the ward lacks the capacity to do some, but not
24 all, of the tasks necessary to care for his or her person or
25 property, or after the person has voluntarily petitioned for
26 appointment of a limited guardian.

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

1 ~~(10)~~~~(9)~~ "Guardian ad litem" means a person who is
2 appointed by the court having jurisdiction of the guardianship
3 or a court in which a particular legal matter is pending to
4 represent a ward in that proceeding.

5 ~~(11)~~~~(10)~~ "Guardian advocate" means a person appointed
6 by a written order of the court to represent a person with
7 developmental disabilities under s. 393.12. As used in this
8 chapter, the term does not apply to a guardian advocate
9 appointed for a person determined incompetent to consent to
10 treatment under s. 394.4598.

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

15 (a) To "manage property" means to take those actions
16 necessary to obtain, administer, and dispose of real and
17 personal property, intangible property, business property,
18 benefits, and income.

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

24 ~~(13)~~~~(12)~~ "Minor" means a person under 18 years of age
25 whose disabilities have not been removed by marriage or
26 otherwise.

27 ~~(14)~~~~(13)~~ "Next of kin" means those persons who would
28 be heirs at law of the ward or alleged incapacitated person if
29 the ~~such~~ person were deceased and includes the lineal
30 descendants of the ~~such~~ ward or alleged incapacitated person.

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1 ~~(15)~~~~(14)~~ "Nonprofit corporate guardian" means a
2 nonprofit corporation organized for religious or charitable
3 purposes and existing under the laws of this state.

4 ~~(16)~~~~(15)~~ "Preneed guardian" means a person named in a
5 written declaration to serve as guardian in the event of the
6 incapacity of the declarant as provided in s. 744.3045.

7 ~~(17)~~~~(16)~~ "Professional guardian" means any guardian
8 who ~~receives or~~ has at any time ~~received compensation for~~
9 ~~services~~ rendered services to three or more ~~than two~~ wards as
10 their guardian. A person serving as a guardian for two or more
11 relatives as defined in s. 744.309(2) is not considered a
12 professional guardian. A public guardian shall be considered a
13 professional guardian for purposes of regulation, education,
14 and registration.

15 ~~(18)~~~~(17)~~ "Property" means both real and personal
16 property or any interest in it and anything that may be the
17 subject of ownership.

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

22 ~~(20)~~ "Surrogate guardian" means a guardian designated
23 according to s. 744.442.

24 ~~(21)~~~~(19)~~ "Totally incapacitated" means incapable of
25 exercising any of the rights enumerated in s. 744.3215(2) and
26 (3).

27 ~~(22)~~~~(20)~~ "Ward" means a person for whom a guardian has
28 been appointed.

29 Section 2. Subsections (5) and (10) of section
30 744.1083, Florida Statutes, are amended to read:

31 744.1083 Professional guardian registration.--

1 (5) The executive director of the office may deny
2 registration to a professional guardian if the executive
3 director determines that the guardian's proposed registration,
4 including the guardian's credit or criminal investigations,
5 indicates that registering the professional guardian would
6 violate any provision of this chapter. If a guardian who is
7 currently registered with the office violates a provision of
8 this chapter, the executive director of the office may suspend
9 or revoke the guardian's registration. If the executive
10 director denies registration to a professional guardian or
11 suspends or revokes a professional guardian's registration,
12 the Statewide Public Guardianship Office must send written
13 notification of the denial, suspension, or revocation to the
14 chief judge of each judicial circuit in which the guardian was
15 serving on the day of the office's decision to deny, suspend,
16 or revoke the registration.

17 (10) A state college or university or an independent
18 college or university described in s. 1009.98(3)(a), may, but
19 is not required to, register as a professional guardian under
20 this section. If a state college or university or independent
21 college or university elects to register as a professional
22 guardian under this subsection, the requirements of
23 subsections (3) and (4) ~~subsection (3)~~ do not apply and the
24 registration must include only the name, address, and employer
25 identification number of the registrant.

26 Section 3. Section 744.301, Florida Statutes, is
27 amended to read:

28 744.301 Natural guardians.--

29 (1) The mother and father jointly are natural
30 guardians of their own children and of their adopted children,
31 during minority. If one parent dies, the surviving parent

1 remains the sole natural guardian even if he or she the
2 ~~natural guardianship shall pass to the surviving parent, and~~
3 ~~the right shall continue even though the surviving parent~~
4 remarries. If the marriage between the parents is dissolved,
5 the natural guardianship belongs ~~shall belong~~ to the parent to
6 whom ~~the~~ custody of the child is awarded. If the parents are
7 given joint custody, then both ~~shall~~ continue as natural
8 guardians. If the marriage is dissolved and neither the
9 father nor the mother is given custody of the child, neither
10 shall act as natural guardian of the child. The mother of a
11 child born out of wedlock is the natural guardian of the child
12 and is entitled to primary residential care and custody of the
13 child unless a court of competent jurisdiction enters an order
14 stating otherwise.

15 (2) The natural ~~guardian or~~ guardians are authorized,
16 on behalf of any of their minor children, to:

17 (a) Settle and consummate a settlement of any claim or
18 cause of action accruing to any of their minor children for
19 damages to the person or property of any of said minor
20 children;

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

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

25 (d) Collect, receive, manage, and dispose of and make
26 elections regarding the proceeds from a life insurance policy
27 or annuity contract payable to, or otherwise accruing to the
28 benefit of, the child; and

29 (e) Collect, receive, manage, dispose of, and make
30 elections regarding the proceeds of any benefit plan as
31

1 defined by s. 710.102, of which the minor is a beneficiary,
2 participant, or owner,
3
4 without appointment, authority, or bond, when the amounts
5 received, in the aggregate, do amount involved in any instance
6 ~~does~~ not exceed \$15,000.

7 (3) All instruments executed by a natural guardian for
8 the benefit of the ward under the powers specified provided
9 ~~for~~ in subsection (2) shall be binding on the ward. The
10 natural guardian may not, without a court order, use the
11 property of the ward for the guardian's benefit or to satisfy
12 the guardian's support obligation to the ward.

13 (4)(a) ~~In any case where a minor has a claim for~~
14 ~~personal injury, property damage, or wrongful death in which~~
15 ~~the gross settlement for the claim of the minor exceeds~~
16 ~~\$15,000, the court may, prior to the approval of the~~
17 ~~settlement of the minor's claim, appoint a guardian ad litem~~
18 ~~to represent the minor's interests. In any case in which the~~
19 ~~gross settlement involving a minor equals or exceeds \$25,000,~~
20 ~~the court shall, prior to the approval of the settlement of~~
21 ~~the minor's claim, appoint a guardian ad litem to represent~~
22 ~~the minor's interests. The appointment of the guardian ad~~
23 ~~litem must be without the necessity of bond or a notice. The~~
24 ~~duty of the guardian ad litem is to protect the minor's~~
25 ~~interests. The procedure for carrying out that duty is as~~
26 ~~prescribed in the Florida Probate Rules. If a legal guardian~~
27 ~~of the minor has previously been appointed and has no~~
28 ~~potential adverse interest to the minor, the court may not~~
29 ~~appoint a guardian ad litem to represent the minor's~~
30 ~~interests, unless the court determines that the appointment is~~
31 ~~otherwise necessary.~~

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

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

6 744.3025 Claims of minors.--

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

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

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

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

22 (e) A court need not appoint a guardian ad litem for
23 the child if a guardian of the minor has previously been
24 appointed and that guardian has no potential adverse interest
25 to the minor. A court may appoint a guardian ad litem if the
26 court believes a guardian ad litem is necessary to protect the
27 interests of the minor.

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

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

4 744.3031 Emergency temporary guardianship.--

5 (3) The authority of an emergency temporary guardian
6 expires 90 ~~60~~ days after the date of appointment or when a
7 guardian is appointed, whichever occurs first. The authority
8 of the emergency temporary guardian may be extended for an
9 additional 90 ~~30~~ days upon a showing that the emergency
10 conditions still exist.

11 (8)(a) An emergency temporary guardian shall file a
12 final report no later than 30 days after the expiration of the
13 emergency temporary guardianship.

14 (b) If an emergency temporary guardian is a guardian
15 for the property, the final report must consist of a verified
16 inventory of the property, as provided in s. 744.365, as of
17 the date the letters of emergency temporary guardianship were
18 issued, a final accounting that gives a full and correct
19 account of the receipts and disbursements of all the property
20 of the ward over which the guardian had control, and a
21 statement of the property of the ward on hand at the end of
22 the emergency temporary guardianship. If the emergency
23 temporary guardian becomes the successor guardian of the
24 property, the final report must satisfy the requirements of
25 the initial guardianship report for the guardian of the
26 property as provided in s. 744.362.

27 (c) If the emergency temporary guardian is a guardian
28 of the person, the final report must summarize the activities
29 of the temporary guardian with regard to residential
30 placement, medical condition, mental health and rehabilitative
31 services, and the social condition of the ward to the extent

1 of the authority granted to the temporary guardian in the
2 letters of guardianship. If the emergency temporary guardian
3 becomes the successor guardian of the person, the report must
4 satisfy the requirements of the initial report for a guardian
5 of the person as stated in s. 744.362.

6 (d) A copy of the final report of the emergency
7 temporary guardianship shall be served on the successor
8 guardian and the ward.

9 Section 6. Section 744.304, Florida Statutes, is
10 amended to read:

11 744.304 Standby guardianship.--

12 (1) Upon a petition by the natural guardians or a
13 guardian appointed under s. 744.3021, the court may appoint a
14 standby guardian of the person or property of a minor ~~or~~
15 ~~consent of both parents, natural or adoptive, if living, or of~~
16 ~~the surviving parent, a standby guardian of the person or~~
17 ~~property of a minor may be appointed by the court. The court~~
18 may also appoint an alternate to the guardian to act if the
19 standby guardian does not serve or ceases to serve after
20 appointment. Notice of a hearing on the petition must be
21 served on the parents, natural or adoptive, and on any
22 guardian currently serving unless the notice is waived in
23 writing by them or waived by the court for good cause shown
24 ~~shall renounce, die, or become incapacitated after the death~~
25 ~~of the last surviving parent of the minor.~~

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

30 (3) The standby guardian or alternate shall be
31 empowered to assume the duties of guardianship ~~his or her~~

1 ~~office~~ immediately on the death, removal, or resignation of
2 the guardian of a minor, or on the death or adjudication of
3 incapacity of the last surviving natural guardian ~~or adoptive~~
4 ~~parent~~ of a minor, or upon the death, removal, or resignation
5 of the guardian for an adult. ~~The; however, such a~~ guardian of
6 the ward's property may not be empowered to deal with the
7 ward's property, other than to safeguard it, before ~~prior to~~
8 issuance of letters of guardianship. If the ward
9 ~~incapacitated person~~ is over the age of 18 years, the court
10 shall conduct a hearing as provided in s. 744.331 before
11 confirming the appointment of the standby guardian, unless the
12 ward has previously been found to be incapacitated.

13 (4) Within 20 days after assumption of duties as
14 guardian, a standby guardian shall petition for confirmation
15 of appointment. If the court finds the standby guardian to be
16 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309
17 and 744.312, appointment of the guardian must be confirmed.
18 Each guardian so confirmed shall file an oath in accordance
19 with s. 744.347, ~~and~~ and shall file a bond, and shall submit to a
20 credit and criminal investigation as set forth in s. 744.3135,
21 if required. Letters of guardianship must then be issued in
22 the manner provided in s. 744.345.

23 (5) After the assumption of duties by a standby
24 guardian, the court shall have jurisdiction over the guardian
25 and the ward.

26 Section 7. Section 744.3115, Florida Statutes, is
27 amended to read:

28 744.3115 Advance directives for health care.--In each
29 proceeding in which a guardian is appointed under this
30 chapter, the court shall determine whether the ward, prior to
31 incapacity, has executed any valid advance directive under

1 ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists,
2 the court shall specify in its order and letters of
3 guardianship what authority, if any, the guardian shall
4 exercise over the surrogate. Pursuant to the grounds listed in
5 s. 765.105, the court, upon its own motion, may, with notice
6 to the surrogate and any other appropriate parties, modify or
7 revoke the authority of the surrogate to make health care
8 decisions for the ward. For purposes of this section, the term
9 "health care decision" has the same meaning as in s. 765.101.

10 Section 8. Subsection (4) of section 744.3145, Florida
11 Statutes, is amended to read:

12 744.3145 Guardian education requirements.--

13 (4) Each person appointed by the court to be a
14 guardian must complete the required number of hours of
15 instruction and education within 4 months ~~1 year~~ after his or
16 her appointment as guardian. The instruction and education
17 must be completed through a course approved by the chief judge
18 of the circuit court and taught by a court-approved
19 organization. Court-approved organizations may include, but
20 are not limited to, community or junior colleges, guardianship
21 organizations, and the local bar association or The Florida
22 Bar.

23 Section 9. Paragraph (i) of subsection (1) and
24 subsection (2) of section 744.3215, Florida Statutes, are
25 amended to read:

26 744.3215 Rights of persons determined incapacitated.--

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

29 (i) To receive necessary services and rehabilitation
30 necessary to maximize the quality of life.

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

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

7 (b) To vote.

8 (c) To personally apply for government benefits.

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

10 (e) To travel.

11 (f) To seek or retain employment.

12 Section 10. Subsections (2), (3), (5), and (7) of
13 section 744.331, Florida Statutes, are amended to read:

14 744.331 Procedures to determine incapacity.--

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

16 (a) When a court appoints an attorney for an alleged
17 incapacitated person, the court must appoint an attorney who
18 is included in the attorney registry compiled pursuant to ss.
19 27.40 and 27.42 by the circuit's Article V indigent services
20 committee. Appointments must be made on a rotating basis,
21 taking into consideration conflicts arising under this
22 chapter.

23 ~~(b)(a)~~ The court shall appoint an attorney for each
24 person alleged to be incapacitated in all cases involving a
25 petition for adjudication of incapacity. The alleged
26 incapacitated person may substitute her or his own attorney
27 for the attorney appointed by the court.

28 ~~(c)(b)~~ Any attorney representing an alleged
29 incapacitated person may not serve as guardian of the alleged
30 incapacitated person or as counsel for the guardian of the
31 alleged incapacitated person or the petitioner.

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

8 (3) EXAMINING COMMITTEE.--

9 (a) Within 5 days after a petition for determination
10 of incapacity has been filed, the court shall appoint an
11 examining committee consisting of three members. One member
12 must be a psychiatrist or other physician. The remaining
13 members must be either a psychologist, gerontologist, another
14 psychiatrist, or other physician, a registered nurse, nurse
15 practitioner, licensed social worker, a person with an
16 advanced degree in gerontology from an accredited institution
17 of higher education, or other person who by knowledge, skill,
18 experience, training, or education may, in the court's
19 discretion, advise the court in the form of an expert opinion.
20 One of three members of the committee must have knowledge of
21 the type of incapacity alleged in the petition. Unless good
22 cause is shown, the attending or family physician may not be
23 appointed to the committee. If the attending or family
24 physician is available for consultation, the committee must
25 consult with the physician. Members of the examining
26 committee may not be related to or associated with one
27 another, ~~or~~ with the petitioner, with counsel for the
28 petitioner or the proposed guardian, or the person alleged to
29 be totally or partially incapacitated. A member may not be
30 employed by any private or governmental agency that has
31 custody of, or furnishes, services or subsidies, directly or

1 indirectly, to the person or the family of the person alleged
2 to be incapacitated or for whom a guardianship is sought. A
3 petitioner may not serve as a member of the examining
4 committee. Members of the examining committee must be able to
5 communicate, either directly or through an interpreter, in the
6 language that the alleged incapacitated person speaks or to
7 communicate in a medium understandable to the alleged
8 incapacitated person if she or he is able to communicate. The
9 clerk of the court shall send notice of the appointment to
10 each person appointed no later than 3 days after the court's
11 appointment.

12 (b) A person who has been appointed to serve as a
13 member of an examining committee to examine an alleged
14 incapacitated person may not thereafter be appointed as a
15 guardian for the person who was the subject of the
16 examination.

17 (c) Each person appointed to an examining committee
18 must file an affidavit with the court stating that he or she
19 has completed the required courses or will do so no later than
20 4 months after his or her initial appointment. Each year, the
21 chief judge of the circuit must prepare a list of persons
22 qualified to be members of the examining committee.

23 (d) A member of an examining committee must complete a
24 minimum of 4 hours of initial training. The person must
25 complete 2 hours of continuing education during each 2-year
26 period after the initial training. The initial training and
27 continuing education program must be developed under the
28 supervision of the Statewide Public Guardianship Office, in
29 consultation with the Florida Conference of Circuit Court
30 Judges, the Elder Law and Real Property, Probate and Trust Law
31 sections of The Florida Bar, the Florida State Guardianship

1 Association, and the Florida Guardianship Foundation. The
2 court may waive the initial training requirement for a person
3 who has served for not less than 5 years on examining
4 committees. If a person wishes to obtain his or her continuing
5 education on the Internet or by watching a video course, the
6 person must first obtain the approval of the chief judge
7 before taking an Internet or video course.

8 ~~(e)(b)~~ Each member of the examining committee shall
9 examine the person. Each ~~The~~ examining committee member must
10 ~~shall~~ determine the alleged incapacitated person's ability to
11 exercise those rights specified in s. 744.3215. In addition to
12 the examination, each ~~the~~ examining committee member must
13 ~~shall~~ have access to, and may consider, previous examinations
14 of the person, including, but not limited to, habilitation
15 plans, school records, and psychological and psychosocial
16 reports voluntarily offered for use by the alleged
17 incapacitated person. Each member of the examining committee
18 must ~~shall~~ submit a report within 15 days after appointment.

19 ~~(f)(c)~~ The examination of the alleged incapacitated
20 person must include a comprehensive examination, a report of
21 which shall be filed by each ~~the~~ examining committee member as
22 part of his or her ~~its~~ written report. The comprehensive
23 examination report should be an essential element, but not
24 necessarily the only element, used in making a capacity and
25 guardianship decision. The comprehensive examination must
26 include, if indicated:

- 27 1. A physical examination;
- 28 2. A mental health examination; and
- 29 3. A functional assessment.

1 If any of these three aspects of the examination is not
2 indicated or cannot be accomplished for any reason, the
3 written report must explain the reasons for its omission.

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

6 1. To the extent possible, a diagnosis, prognosis, and
7 recommended course of treatment.

8 2. An evaluation of the alleged incapacitated person's
9 ability to retain her or his rights, including, without
10 limitation, the rights to marry; vote; contract; manage or
11 dispose of property; have a driver's license; determine her or
12 his residence; consent to medical treatment; and make
13 decisions affecting her or his social environment.

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

17 4. A description of any matters with respect to which
18 the person lacks the capacity to exercise rights, the extent
19 of that incapacity, and the factual basis for the
20 determination that the person lacks that capacity.

21 5. The names of all persons present during the time
22 the committee member conducted his or her examination. If a
23 person other than the person who is the subject of the
24 examination supplies answers posed to the alleged
25 incapacitated person, the report must include the response and
26 the name of the person supplying the answer.

27 ~~6.5-~~ The signature of each member of the committee
28 member and the date and time the member conducted his or her
29 examination.

30 ~~(h)(e)~~ A copy of each committee member's ~~the~~ report
31 must be served on the petitioner and on the attorney for the

1 | alleged incapacitated person within 3 days after the report is
2 | filed and at least 5 days before the hearing on the petition.

3 | (5) ADJUDICATORY HEARING.--

4 | (a) Upon appointment of the examining committee, the
5 | court shall set the date upon which the petition will be
6 | heard. The date for the adjudicatory hearing must be set no
7 | more than 14 days after the filing of the reports ~~report~~ of
8 | the examining committee members, unless good cause is shown.
9 | The adjudicatory hearing must be conducted at the time and
10 | place specified in the notice of hearing and in a manner
11 | consistent with due process.

12 | (b) The alleged incapacitated person must be present
13 | at the adjudicatory hearing, unless waived by the alleged
14 | incapacitated person or the person's attorney or unless good
15 | cause can be shown for her or his absence. Determination of
16 | good cause rests in the sound discretion of the court.

17 | (c) In the adjudicatory hearing on a petition alleging
18 | incapacity, the partial or total incapacity of the person must
19 | be established by clear and convincing evidence.

20 | (7) FEES.--

21 | (a) The examining committee and any attorney appointed
22 | under subsection (2) are entitled to reasonable fees to be
23 | determined by the court.

24 | (b) The fees awarded under paragraph (a) shall be paid
25 | by the guardian from the property of the ward or, if the ward
26 | is indigent, by the state. The state shall have a creditor's
27 | claim against the guardianship property for any amounts paid
28 | under this section. The state may file its claim within 90
29 | days after the entry of an order awarding attorney ad litem
30 | fees. If the state does not file its claim within the 90-day
31 | period, the state is thereafter barred from asserting the

1 claim. Upon petition by the state for payment of the claim,
2 the court shall enter an order authorizing immediate payment
3 out of the property of the ward. The state shall keep a record
4 of the ~~such~~ payments.

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

9 Section 11. Present subsection (4) of section 744.341,
10 Florida Statutes, is redesignated as subsection (5) and
11 amended, and a new subsection (4) is added to that section, to
12 read:

13 744.341 Voluntary guardianship.--

14 (4) A guardian must include in the annual report filed
15 with the court a certificate from a licensed physician who
16 examined the ward not more than 90 days before the annual
17 report is filed with the court. The certificate must certify
18 that the ward is competent to understand the nature of the
19 guardianship and of the ward's authority to delegate powers to
20 the voluntary guardian.

21 ~~(5)(4)~~ A voluntary guardianship may be terminated by
22 the ward by filing a notice with the court that the voluntary
23 guardianship is terminated. The notice must be accompanied by
24 a certificate from a licensed physician who has examined the
25 ward not more than 30 days before the ward filed the notice
26 with the court. The physician must certify that the ward is
27 competent to understand the implications of terminating the
28 guardianship. A copy of the notice and certificate must be
29 served on all interested persons.

30 Section 12. Subsection (9) is added to section
31 744.361, Florida Statutes, to read:

1 744.361 Powers and duties of guardian.--

2 (9) A professional guardian must ensure that each of
3 the guardian's wards is personally visited by the guardian or
4 one of the guardian's professional staff at least once each
5 calendar quarter. During the personal visit, the guardian or
6 the guardian's professional staff person must assess:

7 (a) The ward's physical appearance and condition;

8 (b) The appropriateness of the ward's current living
9 situation; and

10 (c) The need for any additional services and the
11 necessity for continuation of existing services, taking into
12 consideration all aspects of social, psychological,
13 educational, direct service, health, and personal care needs.

14
15 This subsection does not apply to a professional guardian who
16 has been appointed only as guardian of the property.

17 Section 13. Subsection (2) of section 744.365, Florida
18 Statutes, is amended to read:

19 744.365 Verified inventory.--

20 (2) CONTENTS.--The verified inventory must include the
21 following:

22 (a) All property of the ward, real and personal, that
23 has come into the guardian's possession or knowledge,
24 including a statement of all encumbrances, liens, and other
25 secured claims on any item, any claims against the property,
26 and any cause of action accruing to the ward and any trusts of
27 which the ward is a beneficiary;

28 (b) The location of the real and personal property in
29 sufficient detail so that it may be clearly identified or
30 located; and
31

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

3 Section 14. Subsections (1) and (3) of section
4 744.367, Florida Statutes, are amended to read:

5 744.367 Duty to file annual guardianship report.--

6 (1) Unless the court requires filing on a
7 calendar-year basis, each guardian of the person shall file
8 with the court an annual guardianship plan within 90 days
9 after the last day of the anniversary month the letters of
10 guardianship were signed, and the plan must cover the coming
11 fiscal year, ending on the last day in such anniversary month.
12 If the court requires calendar-year filing, the guardianship
13 plan must be filed on or before April 1 of each year ~~within 90~~
14 ~~days after the end of the calendar year.~~

15 (3) The annual guardianship report of a guardian of
16 the property must consist of an annual accounting, and the
17 annual report of a guardian of the person ~~of an incapacitated~~
18 ~~person~~ must consist of an annual guardianship plan. The annual
19 report shall be served on the ward, unless the ward is a minor
20 ~~under the age of 14 years~~ or is totally incapacitated, and on
21 the attorney for the ward, if any. The guardian shall provide
22 a copy to any other person as the court may direct.

23 Section 15. Section 744.3675, Florida Statutes, is
24 amended to read:

25 744.3675 Annual guardianship plan.--Each guardian of
26 the person must file with the court an annual guardianship
27 plan which updates information about the condition of the
28 ward. The annual plan must specify the current needs of the
29 ward and how those needs are proposed to be met in the coming
30 year.

31

- 1 (1) Each plan for an adult ward must, if applicable,
2 include:
- 3 (a) Information concerning the residence of the ward,
4 including:
- 5 1. The ward's address at the time of filing the plan;
6 2. The name and address of each place where the ward
7 was maintained during the preceding year;
8 3. The length of stay of the ward at each place;
9 4. A statement of whether the current residential
10 setting is best suited for the current needs of the ward; and
11 5. Plans for ensuring during the coming year that the
12 ward is in the best residential setting to meet his or her
13 needs.
- 14 (b) Information concerning the medical and mental
15 health conditions ~~condition~~ and treatment and rehabilitation
16 needs of the ward, including:
- 17 1. A resume of any professional medical treatment
18 given to the ward during the preceding year;
19 2. The report of a physician who examined the ward no
20 more than 90 days before the beginning of the applicable
21 reporting period. ~~The~~ Such report must contain an evaluation
22 of the ward's condition and a statement of the current level
23 of capacity of the ward; and
24 3. The plan for providing ~~provision of~~ medical, mental
25 health, and rehabilitative services in the coming year.
- 26 (c) Information concerning the social condition of the
27 ward, including:
- 28 1. The social and personal services currently used
29 ~~utilized~~ by the ward;
30
31

1 2. The social skills of the ward, including a
2 statement of how well the ward communicates and maintains
3 interpersonal relationships with others; and

4 ~~3. A description of the ward's activities at~~
5 ~~communication and visitation; and~~

6 ~~3.4.~~ The social needs of the ward.

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

9 (a) Information concerning the residence of the minor,
10 including:

11 1. The minor's address at the time of filing the plan;
12 and

13 2. The name and address of each place where the minor
14 lived during the preceding year.

15 (b) Information concerning the medical and mental
16 health conditions and treatment and rehabilitation needs of
17 the minor, including:

18 1. A resume of any professional medical treatment
19 given to the minor during the preceding year;

20 2. A report from the physician who examined the minor
21 no more than 180 days before the beginning of the applicable
22 reporting period which contains an evaluation of the minor's
23 physical and mental conditions; and

24 3. The plan for providing medical services in the
25 coming year.

26 (c) Information concerning the education of the minor,
27 including:

28 1. A summary of the school progress report;

29 2. The social development of the minor, including a
30 statement of how well the minor communicates and maintains
31 interpersonal relationships with others; and

1 3. The social needs of the minor.

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

4 (a) A summary of activities during the preceding year
5 which were designed to enhance ~~increase~~ the capacity of the
6 ward;

7 (b) A statement of whether the ward can have any
8 rights restored; and

9 (c) A statement of whether restoration of any rights
10 will be sought.

11 ~~(4)(3)~~ The court, in its discretion, may require
12 reexamination of the ward by a physician at any time.

13 Section 16. Subsections (2) and (3) of section
14 744.3678, Florida Statutes, are amended to read:

15 744.3678 Annual accounting.--

16 (2) The annual accounting must include:

17 (a) A full and correct account of the receipts and
18 disbursements of all of the ward's property over which the
19 guardian has control and a statement of the ward's property on
20 hand at the end of the accounting period. This paragraph does
21 not apply to any property or any trust of which the ward is a
22 beneficiary but which is not under the control or
23 administration of the guardian.

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

27 (3) The guardian must obtain a receipt, ~~or~~ canceled
28 check, or other proof of payment for all expenditures and
29 disbursements made on behalf of the ward. The guardian must
30 preserve all evidence of payment ~~the receipts and canceled~~
31 ~~checks~~, along with other substantiating papers, for a period

1 of 3 years after his or her discharge. The receipts, proof of
2 payment checks, and substantiating papers need not be filed
3 with the court but shall be made available for inspection and
4 review at the ~~such~~ time and ~~in such~~ place and before such
5 persons as the court may ~~from time to time~~ order.

6 Section 17. Section 744.3679, Florida Statutes, is
7 amended to read:

8 744.3679 Simplified accounting procedures in certain
9 cases.--

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

16 (a) The original or a certified copy of the year-end
17 statement of the ward's account from the financial
18 institution; and

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

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

24 ~~(2)(3)~~ The accounting allowed by subsection (1) is in
25 lieu of the accounting and auditing procedures under s.
26 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any
27 interested party may seek judicial review as provided in s.
28 744.3685.

29 ~~(3)(4)~~ The guardian need not be represented by an
30 attorney in order to file the annual accounting allowed by
31 subsection (1).

1 Section 18. Subsection (3) of section 744.368, Florida
2 Statutes, is amended to read:

3 744.368 Responsibilities of the clerk of the circuit
4 court.--

5 (3) Within 90 days after the filing of the verified
6 inventory and accountings ~~initial or annual guardianship~~
7 ~~report~~ by a guardian of the property, the clerk shall audit
8 the verified inventory and ~~or~~ the accountings ~~annual~~
9 ~~accounting~~. The clerk shall advise the court of the results of
10 the audit.

11 Section 19. Subsection (19) of section 744.441,
12 Florida Statutes, is amended to read:

13 744.441 Powers of guardian upon court approval.--After
14 obtaining approval of the court pursuant to a petition for
15 authorization to act, a plenary guardian of the property, or a
16 limited guardian of the property within the powers granted by
17 the order appointing the guardian or an approved annual or
18 amended guardianship report, may:

19 (19) Create or amend revocable trusts or create
20 irrevocable trusts of property of the ward's estate which may
21 extend beyond the disability or life of the ward in connection
22 with estate, gift, income, or other tax planning or in
23 connection with estate planning.

24 Section 20. Section 744.442, Florida Statutes, is
25 created to read:

26 744.442 Delegation of authority.--

27 (1) A guardian may designate a surrogate guardian to
28 exercise the powers of the guardian if the guardian is
29 unavailable to act. A person designated as a surrogate
30 guardian under this section must be a professional guardian.

31

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

3 (b) If the court approves the designation, the order
4 must specify the name and business address of the surrogate
5 guardian, and the duration of appointment, which may not
6 exceed 30 days. The court may extend the appointment for good
7 cause shown. The surrogate guardian may exercise all powers of
8 the guardian unless limited by order of the court. The
9 surrogate guardian must file with the court an oath swearing
10 or affirming that he or she will faithfully perform the duties
11 delegated. The court may require the surrogate guardian to
12 post a bond.

13 (3) This section does not limit the responsibility of
14 the guardian to the ward and to the court. The guardian is
15 liable for the acts of the surrogate guardian. The guardian
16 may terminate the authority of the surrogate guardian by
17 filing a written notice of the termination with the court.

18 (4) The surrogate guardian is subject to the
19 jurisdiction of the court as if appointed to serve as
20 guardian.

21 Section 21. Paragraphs (c), (e), and (f) of subsection
22 (2) and subsection (4) of section 744.464, Florida Statutes,
23 are amended to read:

24 744.464 Restoration to capacity.--

25 (2) SUGGESTION OF CAPACITY.--

26 (c) The court shall immediately send notice of the
27 filing of the suggestion of capacity to the ward, the
28 guardian, the attorney for the ward, if any, ~~the state~~
29 ~~attorney,~~ and any other interested persons designated by the
30 court. Formal notice must be served on the guardian.
31 Informal notice may be served on other persons. Notice need

1 not be served on the person who filed the suggestion of
2 capacity.

3 (e) If an objection is timely filed, or if the medical
4 examination suggests that full restoration is not appropriate,
5 the court shall set the matter for hearing. If the ward does
6 not have an attorney, the court shall appoint one to represent
7 the ward.

8 (f) Notice of the hearing and copies of the objections
9 and medical examination reports shall be served upon the ward,
10 the ward's attorney, the guardian, ~~the state attorney,~~ the
11 ward's next of kin, and any other interested persons as
12 directed by the court.

13 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
14 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
15 ~~capacity may not be filed within 90 days after an adjudication~~
16 ~~of incapacity or denial of restoration, unless good cause is~~
17 ~~shown.~~

18 Section 22. Section 744.474, Florida Statutes, is
19 amended to read:

20 744.474 Reasons for removal of guardian.--A guardian
21 may be removed for any of the following reasons, and the
22 removal shall be in addition to any other penalties prescribed
23 by law:

- 24 (1) Fraud in obtaining her or his appointment.
25 (2) Failure to discharge her or his duties.
26 (3) Abuse of her or his powers.
27 (4) An incapacity or illness, including substance
28 abuse, which renders the guardian incapable of discharging her
29 or his duties.
30 (5) Failure to comply with any order of the court.
31

1 (6) Failure to return schedules of property sold or
2 accounts of sales of property or to produce and exhibit the
3 ward's assets when so required.

4 (7) The wasting, embezzlement, or other mismanagement
5 of the ward's property.

6 (8) Failure to give bond or security for any purpose
7 when required by the court or failure to file with the annual
8 guardianship plan the evidence required by s. 744.351 that the
9 sureties on her or his bond are alive and solvent.

10 (9) Conviction of a felony.

11 (10) Appointment of a receiver, trustee in bankruptcy,
12 or liquidator for any corporate guardian.

13 (11) Development of a conflict of interest between the
14 ward and the guardian.

15 (12) Having been found guilty of, regardless of
16 adjudication, or entered a plea of nolo contendere or guilty
17 to, any offense prohibited under s. 435.03 or under any
18 similar statute of another jurisdiction.

19 (13) A material failure to comply with the
20 guardianship report by the guardian.

21 (14) A failure to comply with the rules for timely
22 filing the initial and annual guardianship reports.

23 (15) A failure to fulfill the guardianship education
24 requirements.

25 (16) The improper management of the ward's assets.

26 (17) A material change in the ward's financial
27 circumstances such that the guardian is no longer qualified to
28 manage the finances of the ward, or the previous degree of
29 management is no longer required.

30 (18) After appointment, the guardian becomes a
31 disqualified person as set forth in s. 744.309(3).

1 (19) Upon a showing by a person who did not receive
2 notice of the petition for adjudication of incapacity, when
3 such notice is required, or who is related to the ward within
4 the relationships specified for nonresident relatives in ss.
5 744.309(2) and 744.312(2) and who has not previously been
6 rejected by the court as a guardian that+

7 ~~(a)~~ the current guardian is not a family member+ and
8 subsection (20) applies, in which case the court may remove
9 the current guardian and appoint the petitioner, or such
10 person as the court deems in the best interest of the ward, as
11 guardian of the person or of the property, or both.

12 ~~(20)(b)~~ Upon a showing that removal of the current
13 guardian is in the best interest of the ward, ~~the court may~~
14 ~~remove the current guardian and appoint the petitioner, or~~
15 ~~such person as the court deems in the best interest of the~~
16 ~~ward, either as guardian of the person or of the property, or~~
17 ~~both.~~

18
19 In determining whether a guardian who is related by blood or
20 marriage to the ward is to be removed, there shall be a
21 rebuttable presumption that the guardian is acting in the best
22 interests of the ward.

23 Section 23. Section 744.511, Florida Statutes, is
24 amended to read:

25 744.511 Accounting upon removal.--A removed guardian
26 shall file with the court a true, complete, and final report
27 of his or her guardianship within 20 days after removal and
28 shall serve a copy on the successor guardian and the ward,
29 unless the ward is a minor ~~under 14 years of age~~ or has been
30 determined to be totally incapacitated.

31

1 Section 24. Section 744.527, Florida Statutes, is
2 amended to read:

3 744.527 Final reports and application for discharge;
4 hearing.--

5 (1) When the court terminates the guardianship,
6 according to the reasons set forth in s. 744.521 the guardian
7 shall promptly file his or her final report. If the ward has
8 died, the guardian must file a final report with the court no
9 later than 45 days after he or she has been served with
10 letters of administration or letters of curatorship. If no
11 objections are filed and if it appears that the guardian has
12 made full and complete distribution to the person entitled and
13 has otherwise faithfully discharged his or her duties, the
14 court shall approve the final report. If objections are
15 filed, the court shall conduct a hearing in the same manner as
16 provided for a hearing on objections to annual guardianship
17 reports.

18 (2) The guardian applying for discharge may is
19 ~~authorized to~~ retain from the funds in his or her possession a
20 sufficient amount to pay the final costs of administration,
21 including guardian and attorney's fees regardless of the death
22 of the ward, accruing between the filing of his or her final
23 returns and the order of discharge.

24 Section 25. Subsection (3) of section 744.528, Florida
25 Statutes, is amended to read:

26 744.528 Discharge of guardian named as personal
27 representative.--

28 (3) Any interested person may file a notice of ~~The~~
29 ~~court shall set~~ a hearing on any objections filed by the
30 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
31 the guardian, beneficiaries of the ward's estate, and any

1 other person to whom the court directs service. If a notice of
2 hearing on the objections is not served within 90 days after
3 filing of the objections, the objections are deemed abandoned.

4 Section 26. Subsection (6) of section 744.708, Florida
5 Statutes, is amended to read:

6 744.708 Reports and standards.--

7 (6) ~~A The~~ public guardian shall ensure that each of
8 the guardian's wards is personally visited ~~ward is seen by the~~
9 public guardian or by a professional staff person of the
10 public guardian at least once each calendar quarter ~~four times~~
11 ~~a year.~~ During this personal visit, the public guardian or the
12 professional staff person shall assess:

13 (a) The ward's physical and mental appearance and
14 condition;

15 (b) The appropriateness of the ward's current living
16 situation; and

17 (c) The need for any additional services and the
18 necessity for continuation of existing services, taking into
19 consideration all aspects of social, psychological,
20 educational, direct service, health, and personal care needs.

21 Section 27. Paragraph (a) of subsection (5) of section
22 765.101, Florida Statutes, is amended to read:

23 765.101 Definitions.--As used in this chapter:

24 (5) "Health care decision" means:

25 (a) Informed consent, refusal of consent, or
26 withdrawal of consent to any and all health care, including
27 life-prolonging procedures and mental health treatment, unless
28 otherwise stated in the advance directives.

29 Section 28. Paragraph (c) of subsection (8) of section
30 121.091, Florida Statutes, is amended to read:

31

1 121.091 Benefits payable under the system.--Benefits
2 may not be paid under this section unless the member has
3 terminated employment as provided in s. 121.021(39)(a) or
4 begun participation in the Deferred Retirement Option Program
5 as provided in subsection (13), and a proper application has
6 been filed in the manner prescribed by the department. The
7 department may cancel an application for retirement benefits
8 when the member or beneficiary fails to timely provide the
9 information and documents required by this chapter and the
10 department's rules. The department shall adopt rules
11 establishing procedures for application for retirement
12 benefits and for the cancellation of such application when the
13 required information or documents are not received.

14 (8) DESIGNATION OF BENEFICIARIES.--

15 (c) Notwithstanding the member's designation of
16 benefits to be paid through a trust to a beneficiary that is a
17 natural person as provided in s. 121.021(46), and
18 notwithstanding the provisions of the trust, benefits shall be
19 paid directly to the beneficiary if the ~~such~~ person is no
20 longer a minor or incapacitated as defined in s. 744.102(12)
21 and (13) ~~s. 744.102(11) and (12)~~.

22 Section 29. Paragraph (c) of subsection (20) of
23 section 121.4501, Florida Statutes, is amended to read:

24 121.4501 Public Employee Optional Retirement
25 Program.--

26 (20) DESIGNATION OF BENEFICIARIES.--

27 (c) Notwithstanding the participant's designation of
28 benefits to be paid through a trust to a beneficiary that is a
29 natural person, and notwithstanding the provisions of the
30 trust, benefits shall be paid directly to the beneficiary if
31

1 such person is no longer a minor or incapacitated as defined
2 in s. 744.102(12) and (13) ~~s. 744.102(11) and (12)~~.

3 Section 30. Subsection (1) and paragraphs (b), (d),
4 and (f) of subsection (4) of section 709.08, Florida Statutes,
5 are amended to read:

6 709.08 Durable power of attorney.--

7 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
8 power of attorney is a written power of attorney by which a
9 principal designates another as the principal's attorney in
10 fact. The durable power of attorney must be in writing, must
11 be executed with the same formalities required for the
12 conveyance of real property by Florida law, and must contain
13 the words: "This durable power of attorney is not affected by
14 subsequent incapacity of the principal except as provided in
15 s. 709.08, Florida Statutes"; or similar words that show the
16 principal's intent that the authority conferred is exercisable
17 notwithstanding the principal's subsequent incapacity, except
18 as otherwise provided by this section. The durable power of
19 attorney is exercisable as of the date of execution; however,
20 if the durable power of attorney is conditioned upon the
21 principal's lack of capacity to manage property as defined in
22 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of
23 attorney is exercisable upon the delivery of affidavits in
24 paragraphs (4)(c) and (d) to the third party.

25 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
26 AFFIDAVITS.--

27 (b) Any third party may rely upon the authority
28 granted in a durable power of attorney that is conditioned on
29 the principal's lack of capacity to manage property as defined
30 in s. 744.102(12)(a) ~~s. 744.102(11)(a)~~ only after receiving
31 the affidavits provided in paragraphs (c) and (d), and such

1 | reliance shall end when the third party has received notice as
2 | provided in subsection (5).

3 | (d) A determination that a principal lacks the
4 | capacity to manage property as defined in s. 744.102(12)(a) ~~s-~~
5 | ~~744.102(11)(a)~~ must be made and evidenced by the affidavit of
6 | a physician licensed to practice medicine pursuant to chapters
7 | 458 and 459 as of the date of the affidavit. A judicial
8 | determination that the principal lacks the capacity to manage
9 | property pursuant to chapter 744 is not required prior to the
10 | determination by the physician and the execution of the
11 | affidavit. For purposes of this section, the physician
12 | executing the affidavit must be the primary physician who has
13 | responsibility for the treatment and care of the principal.
14 | The affidavit executed by a physician must state where the
15 | physician is licensed to practice medicine, that the physician
16 | is the primary physician who has responsibility for the
17 | treatment and care of the principal, and that the physician
18 | believes that the principal lacks the capacity to manage
19 | property as defined in s. 744.102(11)(a). The affidavit may,
20 | but need not, be in the following form:

21 |
22 | STATE OF.....
23 | COUNTY OF.....

24 |
25 | Before me, the undersigned authority, personally
26 | appeared ...(name of physician)..., Affiant, who swore or
27 | affirmed that:

28 | 1. Affiant is a physician licensed to practice
29 | medicine in ...(name of state, territory, or foreign
30 | country)....

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2. Affiant is the primary physician who has responsibility for the treatment and care of ...(principal's name)....

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

.....
...(Affiant)...

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

...(Signature of Notary Public-State of Florida)...

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

Personally Known OR Produced Identification
...(Type of Identification Produced)...

(f) A third party may not rely on the authority granted in a durable power of attorney conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)(a) ~~s. 744.102(11)(a)~~ when any affidavit presented has been executed more than 6 months prior to the

1 first presentation of the durable power of attorney to the
2 third party.

3 Section 31. Subsection (3) of section 744.1085,
4 Florida Statutes, is amended to read:

5 744.1085 Regulation of professional guardians;
6 application; bond required; educational requirements.--

7 (3) Each professional guardian defined in s.
8 744.102(17) ~~s. 744.102(16)~~ and public guardian must receive a
9 minimum of 40 hours of instruction and training. Each
10 professional guardian must receive a minimum of 16 hours of
11 continuing education every 2 calendar years after the year in
12 which the initial 40-hour educational requirement is met. The
13 instruction and education must be completed through a course
14 approved or offered by the Statewide Public Guardianship
15 Office. The expenses incurred to satisfy the educational
16 requirements prescribed in this section may not be paid with
17 the assets of any ward. This subsection does not apply to any
18 attorney who is licensed to practice law in this state.

19 Section 32. For the purpose of incorporating the
20 amendment made by this act to section 744.3215, Florida
21 Statutes, in a reference thereto, subsection (4) of section
22 117.107, Florida Statutes, is reenacted to read:

23 117.107 Prohibited acts.--

24 (4) A notary public may not take the acknowledgment of
25 or administer an oath to a person whom the notary public
26 actually knows to have been adjudicated mentally incapacitated
27 by a court of competent jurisdiction, where the acknowledgment
28 or oath necessitates the exercise of a right that has been
29 removed pursuant to s. 744.3215(2) or (3), and where the
30 person has not been restored to capacity as a matter of
31 record.

1 Section 33. This act shall take effect July 1, 2006.

2

3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 Senate Bill 472

6

6 The committee substitute changes the underlying bill in that
7 it:

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8 -- Deletes a requirement that an alleged incapacitated
9 person have court approval to substitute his or her own
10 attorney for a court appointed guardianship attorney;

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11 -- Deletes express authorization for professional guardians
12 to serve on examining committees of alleged incapacitated
13 persons;

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12 -- Deletes authorization for guardians to amend irrevocable
13 trusts;

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13 -- Deletes language that provided courts with continuing
14 jurisdiction over trusts created or amended by a
15 guardian;

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14 -- Deletes language that provided courts with personal
15 jurisdiction over trustees of trusts created or amended
16 by a guardian; and

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16 -- Makes technical and conforming changes.

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