

By Senator Detert

28-01081A-15

20151226__

1 A bill to be entitled
2 An act relating to guardianship; providing directives
3 to the Division of Law Revision and Information;
4 amending s. 744.1012, F.S.; revising legislative
5 intent; renumbering s. 744.201, F.S.; renumbering and
6 amending s. 744.202, F.S.; conforming a cross-
7 reference; renumbering s. 744.2025, F.S.; renumbering
8 and amending s. 744.7021, F.S.; revising the
9 responsibilities of the executive director for the
10 Office of Public and Professional Guardians;
11 conforming provisions to changes made by the act;
12 renumbering and amending s. 744.1083, F.S.; removing a
13 provision authorizing the executive director to
14 suspend or revoke the registration of a guardian who
15 commits certain violations; removing the requirement
16 of written notification to the chief judge of the
17 judicial circuit upon the executive director's denial,
18 suspension, or revocation of a registration;
19 conforming provisions to changes made by the act;
20 conforming a cross-reference; renumbering and amending
21 s. 744.1085, F.S.; removing an obsolete provision;
22 conforming provisions to changes made by the act;
23 conforming a cross-reference; creating s. 744.2004,
24 F.S.; requiring the Office of Public and Professional
25 Guardians to adopt rules; requiring the office, under
26 certain circumstances, to make a specified
27 recommendation to a court of competent jurisdiction;
28 renumbering and amending s. 744.344, F.S.; requiring
29 that a professional guardian appointed by a court to

28-01081A-15

20151226__

30 represent an allegedly incapacitated person be
31 selected from a registry of professional guardians;
32 requiring the chief judge of a circuit court to
33 compile a list of professional guardians by county and
34 provide the list to the clerk of court in each county;
35 providing requirements for inclusion in the registry;
36 providing procedures for a court to appoint a
37 professional guardian; providing an exception;
38 requiring the clerk of the court to maintain the
39 registry and provide the court with the name of a
40 professional guardian for appointment; renumbering and
41 amending s. 744.703, F.S.; conforming provisions to
42 changes made by the act; renumbering ss. 744.704 and
43 744.705, F.S.; renumbering and amending ss. 744.706
44 and 744.707, F.S.; conforming provisions to changes
45 made by the act; renumbering s. 744.709, F.S.;

46 renumbering and amending ss. 744.708, 744.7081, and
47 744.7082, F.S.; conforming provisions to changes made
48 by the act; renumbering and amending s. 744.712, F.S.;

49 providing legislative intent; conforming provisions;
50 renumbering and amending ss. 744.713, 744.714, and
51 744.715, F.S.; conforming provisions to changes made
52 by the act; repealing s. 744.701, F.S.; relating to a
53 short title; repealing s. 744.702, F.S.; relating to
54 legislative intent; repealing s. 744.7101, F.S.;

55 relating to a short title; repealing s. 744.711, F.S.;

56 relating to legislative findings and intent; amending
57 ss. 400.148, 744.3135, and 744.331, F.S.; conforming
58 provisions to changes made by the act; amending ss.

28-01081A-15

20151226__

59 20.415, 415.1102, and 744.524, F.S.; conforming cross-
60 references; making technical changes; providing an
61 effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. The Division of Law Revision and Information is
66 directed to add ss. 744.1096-744.1098, Florida Statutes, created
67 by this act, to part I of chapter 744, Florida Statutes.

68 Section 2. The Division of Law Revision and Information is
69 directed to retitle part II of chapter 744, Florida Statutes,
70 consisting of ss. 744.2001-744.2109, Florida Statutes, as
71 "PUBLIC AND PROFESSIONAL GUARDIANS."

72 Section 3. The Division of Law Revision and Information is
73 directed to remove part IX of chapter 744, Florida Statutes.

74 Section 4. Section 744.1012, Florida Statutes, is amended
75 to read:

76 744.1012 Legislative intent.—The Legislature finds:

77 (1) That adjudicating a person totally incapacitated and in
78 need of a guardian deprives such person of all her or his civil
79 and legal rights and that such deprivation may be unnecessary.

80 (2) ~~The Legislature further finds~~ That it is desirable to
81 make available the least restrictive form of guardianship to
82 assist persons who are only partially incapable of caring for
83 their needs and that alternatives to guardianship and less
84 intrusive means of assistance should always be explored,
85 including, but not limited to, guardian advocates, before an
86 individual's rights are removed through an adjudication of
87 incapacity.

28-01081A-15

20151226__

88 (3) By recognizing that every individual has unique needs
89 and differing abilities, the Legislature declares that it is the
90 purpose of this act to promote the public welfare by
91 establishing a system that permits incapacitated persons to
92 participate as fully as possible in all decisions affecting
93 them; that assists such persons in meeting the essential
94 requirements for their physical health and safety, in protecting
95 their rights, in managing their financial resources, and in
96 developing or regaining their abilities to the maximum extent
97 possible; and that accomplishes these objectives through
98 providing, in each case, the form of assistance that least
99 interferes with the legal capacity of a person to act in her or
100 his own behalf. This act shall be liberally construed to
101 accomplish this purpose.

102 (4) That private guardianship is inadequate where there is
103 no willing and responsible family member or friend, other
104 person, bank, or corporation available to serve as guardian for
105 an incapacitated person, and such person does not have adequate
106 income or wealth for the compensation of a private guardian.

107 (5) The Legislature intends, through the establishment of
108 the Office of Public and Professional Guardians, to permit the
109 establishment of offices of public guardians for the purpose of
110 providing guardianship services for incapacitated persons when
111 no private guardian is available.

112 (6) That a public guardian be provided only to those
113 persons whose needs cannot be met through less drastic means of
114 intervention.

115 Section 5. Section 744.201, Florida Statutes, is renumbered
116 as section 744.1096, Florida Statutes.

28-01081A-15

20151226__

117 Section 6. Section 744.202, Florida Statutes, is renumbered
118 as section 744.1097, Florida Statutes, and subsection (3) of
119 that section is amended to read:

120 744.1097 ~~744.202~~ Venue.—

121 (3) When the residence of an incapacitated person is
122 changed to another county, the guardian shall petition to have
123 the venue of the guardianship changed to the county of the
124 acquired residence, except as provided in s. 744.1098 ~~s.~~
125 ~~744.2025~~.

126 Section 7. Section 744.2025, Florida Statutes, is
127 renumbered as section 744.1098, Florida Statutes.

128 Section 8. Section 744.7021, Florida Statutes, is
129 renumbered as section 744.2001, Florida Statutes, and amended to
130 read:

131 744.2001 ~~744.7021~~ ~~Statewide Public Guardianship Office of~~
132 Public and Professional Guardians.—There is hereby created the
133 ~~Statewide Public Guardianship Office of Public and Professional~~
134 Guardians within the Department of Elderly Affairs.

135 (1) The Secretary of Elderly Affairs shall appoint the
136 executive director, who shall be the head of the ~~Statewide~~
137 ~~Public Guardianship Office of Public and Professional Guardians.~~
138 The executive director must be a member of The Florida Bar,
139 knowledgeable of guardianship law and of the social services
140 available to meet the needs of incapacitated persons, shall
141 serve on a full-time basis, and shall personally, or through a
142 representative ~~representatives~~ of the office, carry out the
143 purposes and functions of the ~~Statewide Public Guardianship~~
144 Office of Public and Professional Guardians in accordance with
145 state and federal law. The executive director shall serve at the

28-01081A-15

20151226__

146 pleasure of and report to the secretary.

147 (2) The executive director shall, within available
148 resources:

149 (a) Have oversight responsibilities for all public and
150 professional guardians.

151 (b) Review the standards and criteria for the education,
152 registration, and certification of public and professional
153 guardians in Florida.

154 (3) The executive director's oversight responsibilities of
155 professional guardians shall include, but not be limited to:

156 (a) The development and implementation of a monitoring tool
157 to be used for regular monitoring activities of professional
158 guardians related to the management of each ward and his or her
159 personal affairs. This monitoring may not include a financial
160 audit as required by the clerk of the circuit court under s.
161 744.368.

162 (b) The development of procedures, in consultation with
163 professional guardianship associations, for the review of an
164 allegation that a professional guardian has violated an
165 applicable statute, fiduciary duty, standard of practice, rule,
166 regulation, or other requirement governing the conduct of
167 professional guardians.

168 (c) The establishment of disciplinary proceedings,
169 including the authority to conduct investigations and take
170 appropriate administrative action pursuant to chapter 120.

171 (d) Assist the chief judge in each judicial circuit to
172 establish a registry to allow for the appointment of
173 professional guardians in rotating order as provided in s.
174 744.2005.

28-01081A-15

20151226__

175 (4) The executive director's oversight responsibilities of
176 public guardians shall include, but not be limited to:

177 (a) ~~The executive director shall~~ review of the current
178 public guardian programs in Florida and other states.

179 (b) The development ~~executive director,~~ in consultation
180 with local guardianship offices, of ~~shall develop~~ statewide
181 performance measures and standards.

182 (c) ~~The executive director shall~~ review of the various
183 methods of funding public guardianship programs, the kinds of
184 services being provided by such programs, and the demographics
185 of the wards. In addition, the executive director shall review
186 and make recommendations regarding the feasibility of recovering
187 a portion or all of the costs of providing public guardianship
188 services from the assets or income of the wards.

189 (d) By January 1 of each year, providing ~~the executive~~
190 ~~director shall provide~~ a status report and providing ~~provide~~
191 further recommendations to the secretary that address the need
192 for public guardianship services and related issues.

193 (e) In consultation with the Florida Guardianship
194 Foundation, the development of a guardianship training program
195 curriculum that may be offered to all guardians, whether public
196 or private.

197 (5) The executive director may provide assistance to local
198 governments or entities in pursuing grant opportunities. The
199 executive director shall review and make recommendations in the
200 annual report on the availability and efficacy of seeking
201 Medicaid matching funds. The executive director shall diligently
202 seek ways to use existing programs and services to meet the
203 needs of public wards.

28-01081A-15

20151226__

204 ~~(f) The executive director, in consultation with the~~
205 ~~Florida Guardianship Foundation, shall develop a guardianship~~
206 ~~training program curriculum that may be offered to all guardians~~
207 ~~whether public or private.~~

208 (6)~~(3)~~ The executive director may conduct or contract for
209 demonstration projects authorized by the Department of Elderly
210 Affairs, within funds appropriated or through gifts, grants, or
211 contributions for such purposes, to determine the feasibility or
212 desirability of new concepts of organization, administration,
213 financing, or service delivery designed to preserve the civil
214 and constitutional rights of persons of marginal or diminished
215 capacity. Any gifts, grants, or contributions for such purposes
216 shall be deposited in the Department of Elderly Affairs
217 Administrative Trust Fund.

218 Section 9. Section 744.1083, Florida Statutes, is
219 renumbered as section 744.2002, Florida Statutes, subsections
220 (1) through (5) of that section are amended, and subsections (7)
221 and (10) of that section are republished, to read:

222 744.2002 ~~744.1083~~ Professional guardian registration.—

223 (1) A professional guardian must register with the
224 ~~Statewide Public Guardianship Office~~ of Public and Professional
225 Guardians established in part II ~~IX~~ of this chapter.

226 (2) Annual registration shall be made on forms furnished by
227 the ~~Statewide Public Guardianship Office~~ of Public and
228 Professional Guardians and accompanied by the applicable
229 registration fee as determined by rule. The fee may not exceed
230 \$100.

231 (3) Registration must include the following:

232 (a) Sufficient information to identify the professional

28-01081A-15

20151226__

233 guardian, as follows:

234 1. If the professional guardian is a natural person, the
235 name, address, date of birth, and employer identification or
236 social security number of the person.

237 2. If the professional guardian is a partnership or
238 association, the name, address, and employer identification
239 number of the entity.

240 (b) Documentation that the bonding and educational
241 requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

242 (c) Sufficient information to distinguish a guardian
243 providing guardianship services as a public guardian,
244 individually, through partnership, corporation, or any other
245 business organization.

246 (4) Prior to registering a professional guardian, the
247 ~~Statewide Public Guardianship~~ Office of Public and Professional
248 Guardians must receive and review copies of the credit and
249 criminal investigations conducted under s. 744.3135. The credit
250 and criminal investigations must have been completed within the
251 previous 2 years.

252 (5) The executive director of the office may deny
253 registration to a professional guardian if the executive
254 director determines that the guardian's proposed registration,
255 including the guardian's credit or criminal investigations,
256 indicates that registering the professional guardian would
257 violate any provision of this chapter. ~~If a guardian who is~~
258 ~~currently registered with the office violates a provision of~~
259 ~~this chapter, the executive director of the office may suspend~~
260 ~~or revoke the guardian's registration. If the executive director~~
261 ~~denies registration to a professional guardian or suspends or~~

28-01081A-15

20151226__

262 ~~revokes a professional guardian's registration, the Statewide~~
263 ~~Public Guardianship Office must send written notification of the~~
264 ~~denial, suspension, or revocation to the chief judge of each~~
265 ~~judicial circuit in which the guardian was serving on the day of~~
266 ~~the office's decision to deny, suspend, or revoke the~~
267 ~~registration.~~

268 (7) A trust company, a state banking corporation or state
269 savings association authorized and qualified to exercise
270 fiduciary powers in this state, or a national banking
271 association or federal savings and loan association authorized
272 and qualified to exercise fiduciary powers in this state, may,
273 but is not required to, register as a professional guardian
274 under this section. If a trust company, state banking
275 corporation, state savings association, national banking
276 association, or federal savings and loan association described
277 in this subsection elects to register as a professional guardian
278 under this subsection, the requirements of subsections (3) and
279 (4) do not apply and the registration must include only the
280 name, address, and employer identification number of the
281 registrant, the name and address of its registered agent, if
282 any, and the documentation described in paragraph (3)(b).

283 (10) A state college or university or an independent
284 college or university that is located and chartered in Florida,
285 that is accredited by the Commission on Colleges of the Southern
286 Association of Colleges and Schools or the Accrediting Council
287 for Independent Colleges and Schools, and that confers degrees
288 as defined in s. 1005.02(7) may, but is not required to,
289 register as a professional guardian under this section. If a
290 state college or university or independent college or university

28-01081A-15

20151226__

291 elects to register as a professional guardian under this
 292 subsection, the requirements of subsections (3) and (4) do not
 293 apply and the registration must include only the name, address,
 294 and employer identification number of the registrant.

295 Section 10. Section 744.1085, Florida Statutes, is
 296 renumbered as section 744.2003, Florida Statutes, subsections
 297 (3), (6), and (9) of that section are amended, and subsection
 298 (8) of that section is republished, to read:

299 744.2003 ~~744.1085~~ Regulation of professional guardians;
 300 application; bond required; educational requirements.—

301 (3) Each professional guardian defined in s. 744.102(17)
 302 and public guardian must receive a minimum of 40 hours of
 303 instruction and training. Each professional guardian must
 304 receive a minimum of 16 hours of continuing education every 2
 305 calendar years after the year in which the initial 40-hour
 306 educational requirement is met. The instruction and education
 307 must be completed through a course approved or offered by the
 308 ~~Statewide Public Guardianship Office~~ of Public and Professional
 309 Guardians. The expenses incurred to satisfy the educational
 310 requirements prescribed in this section may not be paid with the
 311 assets of any ward. This subsection does not apply to any
 312 attorney who is licensed to practice law in this state.

313 (6) ~~After July 1, 2005,~~ Each professional guardian is ~~shall~~
 314 ~~be~~ required to demonstrate competency to act as a professional
 315 guardian by taking an examination approved by the Department of
 316 Elderly Affairs.

317 (a) The Department of Elderly Affairs shall determine the
 318 minimum examination score necessary for passage of guardianship
 319 examinations.

28-01081A-15

20151226__

320 (b) The Department of Elderly Affairs shall determine the
321 procedure for administration of the examination.

322 (c) The Department of Elderly Affairs or its contractor
323 shall charge an examination fee for the actual costs of the
324 development and the administration of the examination. The fee
325 for registration and licensing of a professional guardian may
326 not, not to exceed \$500.

327 (d) The Department of Elderly Affairs may recognize passage
328 of a national guardianship examination in lieu of all or part of
329 the examination approved by the Department of Elderly Affairs,
330 except that all professional guardians must take and pass an
331 approved examination section related to Florida law and
332 procedure.

333 (8) The Department of Elderly Affairs shall waive the
334 examination requirement in subsection (6) if a professional
335 guardian can provide:

336 (a) Proof that the guardian has actively acted as a
337 professional guardian for 5 years or more; and

338 (b) A letter from a circuit judge before whom the
339 professional guardian practiced at least 1 year which states
340 that the professional guardian had demonstrated to the court
341 competency as a professional guardian.

342 (9) ~~After July 1, 2004,~~ The court may ~~shall~~ not appoint any
343 professional guardian who has not met the requirements of this
344 section and s. 744.2002 ~~s. 744.1083~~.

345 Section 11. Section 744.2004, Florida Statutes, is created
346 to read:

347 744.2004 Complaints; disciplinary proceedings; penalties;
348 enforcement.-

28-01081A-15

20151226__

349 (1) The Office of Public and Professional Guardians shall
350 adopt rules to:

351 (a) Review, and if determined appropriate, investigate an
352 allegation that a professional guardian has violated an
353 applicable statute, fiduciary duty, standard of practice, rule,
354 regulation, or other requirement governing the conduct of
355 professional guardians.

356 (b) Establish disciplinary proceedings, conduct hearings,
357 and take administrative action pursuant to chapter 120.
358 Disciplinary actions include, but are not limited to, requiring
359 a professional guardian to participate in additional educational
360 courses provided by the Office of Public and Professional
361 Guardians, imposing additional monitoring by the office of the
362 guardianships to which the professional guardian is appointed,
363 and suspension or revocation of a professional guardian's
364 license.

365 (2) If the office makes a final recommendation for the
366 suspension or revocation of a professional guardian's license,
367 it must provide the recommendation to the court of competent
368 jurisdiction for any guardianship case to which the professional
369 guardian is currently appointed.

370 Section 12. Section 744.344, Florida Statutes, is
371 renumbered as section 744.2005, Florida Statutes, and amended to
372 read:

373 744.2005 744.344 Order of appointment.-

374 (1) A professional guardian appointed by the court to
375 provide representation of an alleged incapacitated person shall
376 be selected from a registry of professional guardians.

377 (2) In using a registry:

28-01081A-15

20151226__

378 (a) The chief judge of the judicial circuit shall compile a
379 list of professional guardians by county and provide the list to
380 the clerk of court in each county. To be included on a registry,
381 the professional guardian must be certified by the Office of
382 Public and Professional Guardians.

383 (b) The court shall appoint professional guardians in the
384 order in which the names appear on the applicable registry,
385 unless the court makes a finding of good cause on the record for
386 appointment of a professional guardian out of order. The clerk
387 of the court shall maintain the registry and provide to the
388 court the name of the professional guardian for appointment. A
389 professional guardian not appointed in the order in which her or
390 his name appears on the list shall remain next in order.

391 (3)~~(1)~~ The court may hear testimony on the question of who
392 is entitled to preference in the appointment of a guardian. Any
393 interested person may intervene in the proceedings.

394 (4) The order appointing a guardian must state the nature
395 of the guardianship as either plenary or limited. If limited,
396 the order must state that the guardian may exercise only those
397 delegable rights which have been removed from the incapacitated
398 person and specifically delegated to the guardian. The order
399 shall state the specific powers and duties of the guardian.

400 (5)~~(2)~~ The order appointing a guardian must be consistent
401 with the incapacitated person's welfare and safety, must be the
402 least restrictive appropriate alternative, and must reserve to
403 the incapacitated person the right to make decisions in all
404 matters commensurate with the person's ability to do so.

405 (6)~~(3)~~ If a petition for appointment of guardian has been
406 filed, an order appointing a guardian must be issued

28-01081A-15

20151226__

407 contemporaneously with the order adjudicating the person
408 incapacitated. The order must specify the amount of the bond to
409 be given by the guardian and must state specifically whether the
410 guardian must place all, or part, of the property of the ward in
411 a restricted account in a financial institution designated
412 pursuant to s. 69.031.

413 (7)~~(4)~~ If a petition for the appointment of a guardian has
414 not been filed at the time of the hearing on the petition to
415 determine capacity, the court may appoint an emergency temporary
416 guardian in the manner and for the purposes specified in s.
417 744.3031.

418 (8)~~(5)~~ A plenary guardian shall exercise all delegable
419 rights and powers of the incapacitated person.

420 (9)~~(6)~~ A person for whom a limited guardian has been
421 appointed retains all legal rights except those which have been
422 specifically granted to the guardian in the court's written
423 order.

424 Section 13. Section 744.703, Florida Statutes, is
425 renumbered as 744.2006, Florida Statutes, and subsections (1)
426 and (6) of that section are amended, to read:

427 744.2006 ~~744.703~~ Office of public and professional
428 guardians ~~guardian~~; appointment, notification.-

429 (1) The executive director of the ~~Statewide Public~~
430 Guardianship Office of Public and Professional Guardians, after
431 consultation with the chief judge and other circuit judges
432 within the judicial circuit and with appropriate advocacy groups
433 and individuals and organizations who are knowledgeable about
434 the needs of incapacitated persons, may establish, within a
435 county in the judicial circuit or within the judicial circuit,

28-01081A-15

20151226__

436 one or more offices of public and professional guardian and if
437 so established, shall create a list of persons best qualified to
438 serve as the public guardian, who have been investigated
439 pursuant to s. 744.3135. The public guardian must have knowledge
440 of the legal process and knowledge of social services available
441 to meet the needs of incapacitated persons. The public guardian
442 shall maintain a staff or contract with professionally qualified
443 individuals to carry out the guardianship functions, including
444 an attorney who has experience in probate areas and another
445 person who has a master's degree in social work, or a
446 gerontologist, psychologist, registered nurse, or nurse
447 practitioner. A public guardian that is a nonprofit corporate
448 guardian under s. 744.309(5) must receive tax-exempt status from
449 the United States Internal Revenue Service.

450 (6) Public guardians who have been previously appointed by
451 a chief judge prior to the effective date of this act pursuant
452 to this section may continue in their positions until the
453 expiration of their term pursuant to their agreement. However,
454 oversight of all public guardians shall transfer to the
455 ~~Statewide Public Guardianship~~ Office of Public and Professional
456 Guardians upon the effective date of this act. The executive
457 director of the ~~Statewide Public Guardianship~~ Office of Public
458 and Professional Guardians shall be responsible for all future
459 appointments of public guardians pursuant to this act.

460 Section 14. Section 744.704, Florida Statutes, is
461 renumbered as section 744.2007, Florida Statutes.

462 Section 15. Section 744.705, Florida Statutes, is
463 renumbered as section 744.2008, Florida Statutes.

464 Section 16. Section 744.706, Florida Statutes, is

28-01081A-15

20151226__

465 renumbered as section 744.2009, Florida Statutes, and amended to
466 read:

467 744.2009 ~~744.706~~ Preparation of budget.—Each public
468 guardian, whether funded in whole or in part by money raised
469 through local efforts, grants, or any other source or whether
470 funded in whole or in part by the state, shall prepare a budget
471 for the operation of the office of public guardian to be
472 submitted to the ~~Statewide Public Guardianship~~ Office of Public
473 and Professional Guardians. As appropriate, the ~~Statewide Public~~
474 ~~Guardianship~~ Office of Public and Professional Guardians will
475 include such budgetary information in the Department of Elderly
476 Affairs' legislative budget request. The office of public
477 guardian shall be operated within the limitations of the General
478 Appropriations Act and any other funds appropriated by the
479 Legislature to that particular judicial circuit, subject to the
480 provisions of chapter 216. The Department of Elderly Affairs
481 shall make a separate and distinct request for an appropriation
482 for the ~~Statewide Public Guardianship~~ Office of Public and
483 Professional Guardians. However, this section may ~~shall~~ not be
484 construed to preclude the financing of any operations of the
485 office of the public guardian by moneys raised through local
486 effort or through the efforts of the ~~Statewide Public~~
487 ~~Guardianship~~ Office of Public and Professional Guardians.

488 Section 17. Section 744.707, Florida Statutes, is
489 renumbered as section 744.2101, Florida Statutes, and amended to
490 read:

491 744.2101 ~~744.707~~ Procedures and rules.—The public guardian,
492 subject to the oversight of the ~~Statewide Public Guardianship~~
493 Office of Public and Professional Guardians, is authorized to:

28-01081A-15

20151226__

494 (1) Formulate and adopt necessary procedures to assure the
 495 efficient conduct of the affairs of the ward and general
 496 administration of the office and staff.

497 (2) Contract for services necessary to discharge the duties
 498 of the office.

499 (3) Accept the services of volunteer persons or
 500 organizations and provide reimbursement for proper and necessary
 501 expenses.

502 Section 18. Section 744.709, Florida Statutes, is
 503 renumbered as section 744.2102, Florida Statutes.

504 Section 19. Section 744.708, Florida Statutes, is
 505 renumbered as section 744.2103, Florida Statutes, and
 506 subsections (3), (4), (5), and (7) of that section are amended,
 507 to read:

508 744.2103 ~~744.708~~ Reports and standards.—

509 (3) A public guardian shall file an annual report on the
 510 operations of the office of public guardian, in writing, by
 511 September 1 for the preceding fiscal year with the ~~Statewide~~
 512 ~~Public Guardianship Office~~ of Public and Professional Guardians,
 513 which shall have responsibility for supervision of the
 514 operations of the office of public guardian.

515 (4) Within 6 months of his or her appointment as guardian
 516 of a ward, the public guardian shall submit to the clerk of the
 517 court for placement in the ward's guardianship file and to the
 518 executive director of the ~~Statewide Public Guardianship Office~~
 519 of Public and Professional Guardians a report on his or her
 520 efforts to locate a family member or friend, other person, bank,
 521 or corporation to act as guardian of the ward and a report on
 522 the ward's potential to be restored to capacity.

28-01081A-15

20151226__

523 (5) (a) Each office of public guardian shall undergo an
524 independent audit by a qualified certified public accountant at
525 least once every 2 years. A copy of the audit report shall be
526 submitted to the ~~Statewide Public Guardianship~~ Office of Public
527 and Professional Guardians.

528 (b) In addition to regular monitoring activities, the
529 ~~Statewide Public Guardianship~~ Office of Public and Professional
530 Guardians shall conduct an investigation into the practices of
531 each office of public guardian related to the managing of each
532 ward's personal affairs and property. If feasible, the
533 investigation shall be conducted in conjunction with the
534 financial audit of each office of public guardian under
535 paragraph (a).

536 (7) The ratio for professional staff to wards shall be 1
537 professional to 40 wards. The ~~Statewide Public Guardianship~~
538 Office of Public and Professional Guardians may increase or
539 decrease the ratio after consultation with the local public
540 guardian and the chief judge of the circuit court. The basis for
541 the decision to increase or decrease the prescribed ratio must
542 be included in the annual report to the secretary.

543 Section 20. Section 744.7081, Florida Statutes, is
544 renumbered as section 744.2104, Florida Statutes, and amended to
545 read:

546 744.2104 ~~744.7081~~ Access to records by the ~~Statewide Public~~
547 ~~Guardianship~~ Office of Public and Professional Guardians;
548 confidentiality.—Notwithstanding any other provision of law to
549 the contrary, any medical, financial, or mental health records
550 held by an agency, or the court and its agencies, which are
551 necessary to evaluate the public guardianship system, to assess

28-01081A-15

20151226__

552 the need for additional public guardianship, or to develop
553 required reports, shall be provided to the ~~Statewide Public~~
554 ~~Guardianship~~ Office of Public and Professional Guardians upon
555 that office's request. Any confidential or exempt information
556 provided to the ~~Statewide Public Guardianship~~ Office of Public
557 ~~and Professional Guardians~~ shall continue to be held
558 confidential or exempt as otherwise provided by law. All records
559 held by the ~~Statewide Public Guardianship~~ Office of Public and
560 ~~Professional Guardians~~ relating to the medical, financial, or
561 mental health of vulnerable adults as defined in chapter 415,
562 persons with a developmental disability as defined in chapter
563 393, or persons with a mental illness as defined in chapter 394,
564 shall be confidential and exempt from s. 119.07(1) and s. 24(a),
565 Art. I of the State Constitution.

566 Section 21. Section 744.7082, Florida Statutes, is
567 renumbered as section 744.2105, Florida Statutes, and
568 subsections (1) through (5) and (8) of that section are amended,
569 to read:

570 744.2105 ~~744.7082~~ Direct-support organization; definition;
571 use of property; board of directors; audit; dissolution.—

572 (1) DEFINITION.—As used in this section, the term "direct-
573 support organization" means an organization whose sole purpose
574 is to support the ~~Statewide Public Guardianship~~ Office of Public
575 ~~and Professional Guardians~~ and is:

576 (a) A not-for-profit corporation incorporated under chapter
577 617 and approved by the Department of State;

578 (b) Organized and operated to conduct programs and
579 activities; to raise funds; to request and receive grants,
580 gifts, and bequests of moneys; to acquire, receive, hold,

28-01081A-15

20151226__

581 invest, and administer, in its own name, securities, funds,
582 objects of value, or other property, real or personal; and to
583 make expenditures to or for the direct or indirect benefit of
584 the ~~Statewide Public Guardianship~~ Office of Public and
585 Professional Guardians; and

586 (c) Determined by the ~~Statewide Public Guardianship~~ Office
587 of Public and Professional Guardians to be consistent with the
588 goals of the office, in the best interests of the state, and in
589 accordance with the adopted goals and mission of the Department
590 of Elderly Affairs and the ~~Statewide Public Guardianship~~ Office
591 of Public and Professional Guardians.

592 (2) CONTRACT.—The direct-support organization shall operate
593 under a written contract with the ~~Statewide Public Guardianship~~
594 Office of Public and Professional Guardians. The written
595 contract must provide for:

596 (a) Certification by the ~~Statewide Public Guardianship~~
597 Office of Public and Professional Guardians that the direct-
598 support organization is complying with the terms of the contract
599 and is doing so consistent with the goals and purposes of the
600 office and in the best interests of the state. This
601 certification must be made annually and reported in the official
602 minutes of a meeting of the direct-support organization.

603 (b) The reversion of moneys and property held in trust by
604 the direct-support organization:

605 1. To the ~~Statewide Public Guardianship~~ Office of Public
606 and Professional Guardians if the direct-support organization is
607 no longer approved to operate for the office;

608 2. To the ~~Statewide Public Guardianship~~ Office of Public
609 and Professional Guardians if the direct-support organization

28-01081A-15

20151226__

610 ceases to exist;

611 3. To the Department of Elderly Affairs if the ~~Statewide~~
612 ~~Public Guardianship~~ Office of Public and Professional Guardians
613 ceases to exist; or

614 4. To the state if the Department of Elderly Affairs ceases
615 to exist.

616

617 The fiscal year of the direct-support organization shall begin
618 on July 1 of each year and end on June 30 of the following year.

619 (c) The disclosure of the material provisions of the
620 contract, and the distinction between the ~~Statewide Public~~
621 ~~Guardianship~~ Office of Public and Professional Guardians and the
622 direct-support organization, to donors of gifts, contributions,
623 or bequests, including such disclosure on all promotional and
624 fundraising publications.

625 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs
626 shall appoint a board of directors for the direct-support
627 organization from a list of nominees submitted by the executive
628 director of the ~~Statewide Public Guardianship~~ Office of Public
629 and Professional Guardians.

630 (4) USE OF PROPERTY.—The Department of Elderly Affairs may
631 permit, without charge, appropriate use of fixed property and
632 facilities of the department or the ~~Statewide Public~~
633 ~~Guardianship~~ Office of Public and Professional Guardians by the
634 direct-support organization. The department may prescribe any
635 condition with which the direct-support organization must comply
636 in order to use fixed property or facilities of the department
637 or the ~~Statewide Public Guardianship~~ Office of Public and
638 Professional Guardians.

28-01081A-15

20151226__

639 (5) MONEYS.—Any moneys may be held in a separate depository
 640 account in the name of the direct-support organization and
 641 subject to the provisions of the written contract with the
 642 ~~Statewide Public Guardianship~~ Office of Public and Professional
 643 Guardians. Expenditures of the direct-support organization shall
 644 be expressly used to support the ~~Statewide Public Guardianship~~
 645 Office of Public and Professional Guardians. The expenditures of
 646 the direct-support organization may not be used for the purpose
 647 of lobbying as defined in s. 11.045.

648 (8) DISSOLUTION.—~~A~~ After July 1, 2004, any not-for-profit
 649 corporation incorporated under chapter 617 that is determined by
 650 a circuit court to be representing itself as a direct-support
 651 organization created under this section, but that does not have
 652 a written contract with the ~~Statewide Public Guardianship~~ Office
 653 of Public and Professional Guardians in compliance with this
 654 section, is considered to meet the grounds for a judicial
 655 dissolution described in s. 617.1430(1)(a). The ~~Statewide Public~~
 656 ~~Guardianship~~ Office of Public and Professional Guardians shall
 657 be the recipient for all assets held by the dissolved
 658 corporation which accrued during the period that the dissolved
 659 corporation represented itself as a direct-support organization
 660 created under this section.

661 Section 22. Section 744.712, Florida Statutes, is
 662 renumbered as section 744.2106, Florida Statutes, and
 663 subsections (1) and (3) are amended, to read:

664 744.2106 ~~744.712~~ Joining Forces for Public Guardianship
 665 grant program; purpose.—The Legislature intends to establish the
 666 Joining Forces for Public Guardianship matching grant program
 667 for the purpose of assisting counties to establish and fund

28-01081A-15

20151226__

668 community-supported public guardianship programs. The Joining
669 Forces for Public Guardianship matching grant program shall be
670 established and administered by the ~~Statewide Public~~
671 ~~Guardianship~~ Office of Public and Professional Guardians within
672 the Department of Elderly Affairs. The purpose of the program is
673 to provide startup funding to encourage communities to develop
674 and administer locally funded and supported public guardianship
675 programs to address the needs of indigent and incapacitated
676 residents.

677 (1) The ~~Statewide Public Guardianship~~ Office of Public and
678 Professional Guardians may distribute the grant funds as
679 follows:

680 (a) As initial startup funding to encourage counties that
681 have no office of public guardian to establish an office, or as
682 initial startup funding to open an additional office of public
683 guardian within a county whose public guardianship needs require
684 more than one office of public guardian.

685 (b) As support funding to operational offices of public
686 guardian that demonstrate a necessity for funds to meet the
687 public guardianship needs of a particular geographic area in the
688 state which the office serves.

689 (c) To assist counties that have an operating public
690 guardianship program but that propose to expand the geographic
691 area or population of persons they serve, or to develop and
692 administer innovative programs to increase access to public
693 guardianship in this state.

694

695 Notwithstanding this subsection, the executive director of the
696 office may award emergency grants if he or she determines that

28-01081A-15

20151226__

697 the award is in the best interests of public guardianship in
698 this state. Before making an emergency grant, the executive
699 director must obtain the written approval of the Secretary of
700 Elderly Affairs. Subsections (2), (3), and (4) do not apply to
701 the distribution of emergency grant funds.

702 (3) If an applicant is eligible and meets the requirements
703 to receive grant funds more than once, the ~~Statewide Public~~
704 Guardianship Office of Public and Professional Guardians shall
705 award funds to prior awardees in the following manner:

706 (a) In the second year that grant funds are awarded, the
707 cumulative sum of the award provided to one or more applicants
708 within the same county may not exceed 75 percent of the total
709 amount of grant funds awarded within that county in year one.

710 (b) In the third year that grant funds are awarded, the
711 cumulative sum of the award provided to one or more applicants
712 within the same county may not exceed 60 percent of the total
713 amount of grant funds awarded within that county in year one.

714 (c) In the fourth year that grant funds are awarded, the
715 cumulative sum of the award provided to one or more applicants
716 within the same county may not exceed 45 percent of the total
717 amount of grant funds awarded within that county in year one.

718 (d) In the fifth year that grant funds are awarded, the
719 cumulative sum of the award provided to one or more applicants
720 within the same county may not exceed 30 percent of the total
721 amount of grant funds awarded within that county in year one.

722 (e) In the sixth year that grant funds are awarded, the
723 cumulative sum of the award provided to one or more applicants
724 within the same county may not exceed 15 percent of the total
725 amount of grant funds awarded within that county in year one.

28-01081A-15

20151226__

726

727 The ~~Statewide Public Guardianship~~ Office of Public and
728 Professional Guardians may not award grant funds to any
729 applicant within a county that has received grant funds for more
730 than 6 years.

731 Section 23. Section 744.713, Florida Statutes, is
732 renumbered as section 744.2107, Florida Statutes, and amended to
733 read:

734 744.2107 ~~744.713~~ Program administration; duties of the
735 ~~Statewide Public Guardianship~~ Office of Public and Professional
736 Guardians.—The ~~Statewide Public Guardianship~~ Office of Public
737 and Professional Guardians shall administer the grant program.

738 The office shall:

739 (1) Publicize the availability of grant funds to entities
740 that may be eligible for the funds.

741 (2) Establish an application process for submitting a grant
742 proposal.

743 (3) Request, receive, and review proposals from applicants
744 seeking grant funds.

745 (4) Determine the amount of grant funds each awardee may
746 receive and award grant funds to applicants.

747 (5) Develop a monitoring process to evaluate grant
748 awardees, which may include an annual monitoring visit to each
749 awardee's local office.

750 (6) Ensure that persons or organizations awarded grant
751 funds meet and adhere to the requirements of this act.

752 Section 24. Section 744.714, Florida Statutes, is
753 renumbered as section 744.2108, Florida Statutes, and paragraph
754 (b) of subsection (1) and paragraph (b) of subsection (2) of

28-01081A-15

20151226__

755 that section are amended, to read:

756 744.2108 ~~744.714~~ Eligibility.—

757 (1) Any person or organization that has not been awarded a
758 grant must meet all of the following conditions to be eligible
759 to receive a grant:

760 (b) The applicant must have already been appointed by, or
761 is pending appointment by, the ~~Statewide Public Guardianship~~
762 Office of Public and Professional Guardians to become an office
763 of public guardian in this state.

764 (2) Any person or organization that has been awarded a
765 grant must meet all of the following conditions to be eligible
766 to receive another grant:

767 (b) The applicant must have been appointed by, or is
768 pending reappointment by, the ~~Statewide Public Guardianship~~
769 Office of Public and Professional Guardians to be an office of
770 public guardian in this state.

771 Section 25. Section 744.715, Florida Statutes, is
772 renumbered as section 744.2109, Florida Statutes, and
773 subsections (2) and (4) of that section are amended, to read:

774 744.2109 ~~744.715~~ Grant application requirements; review
775 criteria; awards process.—Grant applications must be submitted
776 to the ~~Statewide Public Guardianship~~ Office of Public and
777 Professional Guardians for review and approval.

778 (2) If the ~~Statewide Public Guardianship~~ Office of Public
779 and Professional Guardians determines that an applicant meets
780 the requirements for an award of grant funds, the office may
781 award the applicant any amount of grant funds the executive
782 director deems appropriate, if the amount awarded meets the
783 requirements of this act. The office may adopt a rule allocating

28-01081A-15

20151226__

784 the maximum allowable amount of grant funds which may be
785 expended on any ward.

786 (4) (a) In the first year of the Joining Forces for Public
787 Guardianship program's existence, the ~~Statewide Public~~
788 ~~Guardianship~~ Office of Public and Professional Guardians shall
789 give priority in awarding grant funds to those entities that:

790 1. Are operating as appointed offices of public guardians
791 in this state;

792 2. Meet all of the requirements for being awarded a grant
793 under this act; and

794 3. Demonstrate a need for grant funds during the current
795 fiscal year due to a loss of local funding formerly raised
796 through court filing fees.

797 (b) In each fiscal year after the first year that grant
798 funds are distributed, the ~~Statewide Public Guardianship~~ Office
799 of Public and Professional Guardians may give priority to
800 awarding grant funds to those entities that:

801 1. Meet all of the requirements of this act for being
802 awarded grant funds; and

803 2. Submit with their application an agreement or
804 confirmation from a local funding source, such as a county,
805 municipality, or any other public or private organization, that
806 the local funding source will contribute matching funds totaling
807 an amount equal to or exceeding \$2 for every \$1 of grant funds
808 awarded by the office. An entity may submit with its application
809 agreements or confirmations from multiple local funding sources
810 showing that the local funding sources will pool their
811 contributed matching funds to the public guardianship program
812 for a combined total of not less than \$2 for every \$1 of grant

28-01081A-15

20151226__

813 funds awarded. In-kind contributions allowable under this
814 section shall be evaluated by the ~~Statewide Public Guardianship~~
815 Office of Public and Professional Guardians and may be counted
816 as part or all of the local matching funds.

817 Section 26. Section 744.701, Florida Statutes, is repealed.

818 Section 27. Section 744.702, Florida Statutes, is repealed.

819 Section 28. Section 744.7101, Florida Statutes, is
820 repealed.

821 Section 29. Section 744.711, Florida Statutes, is repealed.

822 Section 30. Subsection (5) of section 400.148, Florida
823 Statutes, is amended to read:

824 400.148 Medicaid "Up-or-Out" Quality of Care Contract
825 Management Program.—

826 (5) The agency shall, jointly with the ~~Statewide Public~~
827 Guardianship Office of Public and Professional Guardians,
828 develop a system in the pilot project areas to identify Medicaid
829 recipients who are residents of a participating nursing home or
830 assisted living facility who have diminished ability to make
831 their own decisions and who do not have relatives or family
832 available to act as guardians in nursing homes listed on the
833 Nursing Home Guide Watch List. The agency and the ~~Statewide~~
834 Public Guardianship Office of Public and Professional Guardians
835 shall give such residents priority for publicly funded
836 guardianship services.

837 Section 31. Subsection (3), paragraph (c) of subsection
838 (4), and subsections (5) and (6) of section 744.3135, Florida
839 Statutes, are amended to read:

840 744.3135 Credit and criminal investigation.—

841 (3) For professional guardians, the court and the ~~Statewide~~

28-01081A-15

20151226__

842 ~~Public Guardianship~~ Office of Public and Professional Guardians
843 shall accept the satisfactory completion of a criminal history
844 record check by any method described in this subsection. A
845 professional guardian satisfies the requirements of this section
846 by undergoing an electronic fingerprint criminal history record
847 check. A professional guardian may use any electronic
848 fingerprinting equipment used for criminal history record
849 checks. The ~~Statewide Public Guardianship~~ Office of Public and
850 Professional Guardians shall adopt a rule detailing the
851 acceptable methods for completing an electronic fingerprint
852 criminal history record check under this section. The
853 professional guardian shall pay the actual costs incurred by the
854 Federal Bureau of Investigation and the Department of Law
855 Enforcement for the criminal history record check. The entity
856 completing the record check must immediately send the results of
857 the criminal history record check to the clerk of the court and
858 the ~~Statewide Public Guardianship~~ Office of Public and
859 Professional Guardians. The clerk of the court shall maintain
860 the results in the professional guardian's file and shall make
861 the results available to the court.

862 (4)

863 (c) The Department of Law Enforcement shall search all
864 arrest fingerprints received under s. 943.051 against the
865 fingerprints retained in the statewide automated biometric
866 identification system under paragraph (b). Any arrest record
867 that is identified with the fingerprints of a person described
868 in this paragraph must be reported to the clerk of court. The
869 clerk of court must forward any arrest record received for a
870 professional guardian to the ~~Statewide Public Guardianship~~

28-01081A-15

20151226__

871 Office of Public and Professional Guardians within 5 days. Each
872 professional guardian who elects to submit fingerprint
873 information electronically shall participate in this search
874 process by paying an annual fee to the ~~Statewide Public~~
875 ~~Guardianship~~ Office of Public and Professional Guardians of the
876 Department of Elderly Affairs and by informing the clerk of
877 court and the ~~Statewide Public Guardianship~~ Office of Public and
878 Professional Guardians of any change in the status of his or her
879 guardianship appointment. The amount of the annual fee to be
880 imposed for performing these searches and the procedures for the
881 retention of professional guardian fingerprints and the
882 dissemination of search results shall be established by rule of
883 the Department of Law Enforcement. At least once every 5 years,
884 the ~~Statewide Public Guardianship~~ Office of Public and
885 Professional Guardians must request that the Department of Law
886 Enforcement forward the fingerprints maintained under this
887 section to the Federal Bureau of Investigation.

888 (5) (a) A professional guardian, and each employee of a
889 professional guardian who has a fiduciary responsibility to a
890 ward, must complete, at his or her own expense, an investigation
891 of his or her credit history before and at least once every 2
892 years after the date of the guardian's registration with the
893 ~~Statewide Public Guardianship~~ Office of Public and Professional
894 Guardians.

895 (b) The ~~Statewide Public Guardianship~~ Office of Public and
896 Professional Guardians shall adopt a rule detailing the
897 acceptable methods for completing a credit investigation under
898 this section. If appropriate, the ~~Statewide Public Guardianship~~
899 Office of Public and Professional Guardians may administer

28-01081A-15

20151226__

900 credit investigations. If the office chooses to administer the
901 credit investigation, the office may adopt a rule setting a fee,
902 not to exceed \$25, to reimburse the costs associated with the
903 administration of a credit investigation.

904 (6) The ~~Statewide Public Guardianship~~ Office of Public and
905 Professional Guardians may inspect at any time the results of
906 any credit or criminal history record check of a public or
907 professional guardian conducted under this section. The office
908 shall maintain copies of the credit or criminal history record
909 check results in the guardian's registration file. If the
910 results of a credit or criminal investigation of a public or
911 professional guardian have not been forwarded to the ~~Statewide~~
912 ~~Public Guardianship~~ Office of Public and Professional Guardians
913 by the investigating agency, the clerk of the court shall
914 forward copies of the results of the investigations to the
915 office upon receiving them.

916 Section 32. Paragraph (e) of subsection (2) of section
917 415.1102, Florida Statutes, is amended to read:

918 415.1102 Adult protection teams.—

919 (2) Such teams may be composed of, but need not be limited
920 to:

921 (e) Public and professional guardians as described in part
922 II ~~IX~~ of chapter 744.

923 Section 33. Paragraph (d) of subsection (3) of section
924 744.331, Florida Statutes, is amended to read:

925 744.331 Procedures to determine incapacity.—

926 (3) EXAMINING COMMITTEE.—

927 (d) A member of an examining committee must complete a
928 minimum of 4 hours of initial training. The person must complete

28-01081A-15

20151226__

929 2 hours of continuing education during each 2-year period after
930 the initial training. The initial training and continuing
931 education program must be developed under the supervision of the
932 ~~Statewide Public Guardianship~~ Office of Public and Professional
933 Guardians, in consultation with the Florida Conference of
934 Circuit Court Judges; the Elder Law and the Real Property,
935 Probate and Trust Law sections of The Florida Bar; the Florida
936 State Guardianship Association; and the Florida Guardianship
937 Foundation. The court may waive the initial training requirement
938 for a person who has served for not less than 5 years on
939 examining committees. If a person wishes to obtain his or her
940 continuing education on the Internet or by watching a video
941 course, the person must first obtain the approval of the chief
942 judge before taking an Internet or video course.

943 Section 34. Paragraph (a) of subsection (1) of section
944 20.415, Florida Statutes, is amended to read:

945 20.415 Department of Elderly Affairs; trust funds.—The
946 following trust funds shall be administered by the Department of
947 Elderly Affairs:

948 (1) Administrative Trust Fund.

949 (a) Funds to be credited to and uses of the trust fund
950 shall be administered in accordance with ss. 215.32, 744.534,
951 and 744.2001 ~~744.7021~~.

952 Section 35. Section 744.524, Florida Statutes, is amended
953 to read:

954 744.524 Termination of guardianship on change of domicile
955 of resident ward.—When the domicile of a resident ward has
956 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign
957 court having jurisdiction over the ward at the ward's new

28-01081A-15

20151226__

958 domicile has appointed a guardian and that guardian has
959 qualified and posted a bond in an amount required by the foreign
960 court, the guardian in this state may file her or his final
961 report and close the guardianship in this state. The guardian of
962 the property in this state shall cause a notice to be published
963 once a week for 2 consecutive weeks, in a newspaper of general
964 circulation published in the county, that she or he has filed
965 her or his accounting and will apply for discharge on a day
966 certain and that jurisdiction of the ward will be transferred to
967 the state of foreign jurisdiction. If an objection is filed to
968 the termination of the guardianship in this state, the court
969 shall hear the objection and enter an order either sustaining or
970 overruling the objection. Upon the disposition of all objections
971 filed, or if no objection is filed, final settlement shall be
972 made by the Florida guardian. On proof that the remaining
973 property in the guardianship has been received by the foreign
974 guardian, the guardian of the property in this state shall be
975 discharged. The entry of the order terminating the guardianship
976 in this state shall not exonerate the guardian or the guardian's
977 surety from any liability previously incurred.

978 Section 36. This act shall take effect July 1, 2015.