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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2015	.	
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Appropriations Subcommittee on Criminal and Civil Justice (Soto)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (3) of section 709.2109, Florida  
Statutes, is amended to read:

709.2109 Termination or suspension of power of attorney or  
agent's authority.—

(3) If any person initiates judicial proceedings to  
determine the principal's incapacity or for the appointment of a



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11 guardian advocate, the authority granted under the power of  
12 attorney is suspended until the petition is dismissed or  
13 withdrawn or the court enters an order authorizing the agent to  
14 exercise one or more powers granted under the power of attorney.  
15 However, if the agent named in the power of attorney is the  
16 principal's parent, spouse, child, or grandchild, the authority  
17 under the power of attorney is not suspended unless a verified  
18 motion in accordance with s. 744.3203 is also filed.

19 (a) If an emergency arises after initiation of proceedings  
20 to determine incapacity and before adjudication regarding the  
21 principal's capacity, the agent may petition the court in which  
22 the proceeding is pending for authorization to exercise a power  
23 granted under the power of attorney. The petition must set forth  
24 the nature of the emergency, the property or matter involved,  
25 and the power to be exercised by the agent.

26 (b) Notwithstanding the provisions of this section, unless  
27 otherwise ordered by the court, a proceeding to determine  
28 incapacity does not affect the authority of the agent to make  
29 health care decisions for the principal, including, but not  
30 limited to, those provided in chapter 765. If the principal has  
31 executed a health care advance directive designating a health  
32 care surrogate, the terms of the directive control if the  
33 directive and the power of attorney are in conflict unless the  
34 power of attorney is later executed and expressly states  
35 otherwise.

36 Section 2. Subsection (5) is added to section 744.107,  
37 Florida Statutes, to read:

38 744.107 Court monitors.—

39 (5) The court may appoint the office of criminal conflict



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40 and civil regional counsel as monitor if the ward is indigent.

41 Section 3. Subsection (6) is added to section 744.1075,  
42 Florida Statutes, to read:

43 744.1075 Emergency court monitor.-

44 (6) The court may appoint the office of criminal conflict  
45 and civil regional counsel as monitor if the ward is indigent.

46 Section 4. Subsections (5) and (8) of section 744.108,  
47 Florida Statutes, are amended, and subsection (9) is added to  
48 that section, to read:

49 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees  
50 and expenses.-

51 (5) All petitions for guardian ~~guardian's~~ and attorney  
52 ~~attorney's~~ fees and expenses must be accompanied by an itemized  
53 description of the services performed for the fees and expenses  
54 sought to be recovered.

55 (8) When court proceedings are instituted to review or  
56 determine a guardian's or an attorney's fees under subsection  
57 (2), such proceedings are part of the guardianship  
58 administration process and the costs, including costs and  
59 attorney fees for the guardian's attorney, an attorney appointed  
60 under s. 744.331(2), or an attorney who has rendered services to  
61 the ward, shall be determined by the court and paid from the  
62 assets of the guardianship estate unless the court finds the  
63 requested compensation under subsection (2) to be substantially  
64 unreasonable.

65 (9) The court may determine that a request for compensation  
66 by the guardian, the guardian's attorney, a person employed by  
67 the guardian, an attorney appointed under s. 744.331(2), or an  
68 attorney who has rendered services to the ward, is reasonable



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69 without receiving expert testimony. A person or party may offer  
70 expert testimony for or against a request for compensation after  
71 giving notice to interested persons. Reasonable expert witness  
72 fees shall be awarded by the court and paid from the assets of  
73 the guardianship estate using the standards in subsection (8).

74 Section 5. Section 744.3025, Florida Statutes, is amended  
75 to read:

76 744.3025 Claims of minors.—

77 (1) (a) The court may appoint a guardian ad litem to  
78 represent the minor's interest before approving a settlement of  
79 the minor's portion of the claim in a any case in which a minor  
80 has a claim for personal injury, property damage, wrongful  
81 death, or other cause of action in which the gross settlement of  
82 the claim exceeds \$15,000 if the court believes a guardian ad  
83 litem is necessary to protect the minor's interest.

84 (b) Except as provided in paragraph (e), the court shall  
85 appoint a guardian ad litem to represent the minor's interest  
86 before approving a settlement of the minor's claim in a any case  
87 in which the gross settlement involving a minor equals or  
88 exceeds \$50,000.

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

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

93 (e) A court need not appoint a guardian ad litem for the  
94 minor if a guardian of the minor has previously been appointed  
95 and that guardian has no potential adverse interest to the  
96 minor. ~~A court may appoint a guardian ad litem if the court~~  
97 ~~believes a guardian ad litem is necessary to protect the~~



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98 ~~interests of the minor.~~

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

102 (3) A settlement of a claim pursuant to this section is  
103 subject to the confidentiality provisions of this chapter.

104 Section 6. Subsections (2) through (8) of section 744.3031,  
105 Florida Statutes, are renumbered as subsections (3) through (9),  
106 respectively, and a new subsection (2) is added to that section,  
107 and present subsection (8) of that section is amended, to read:

108 744.3031 Emergency temporary guardianship.-

109 (2) Notice of filing of the petition for appointment of an  
110 emergency temporary guardian and a hearing on the petition must  
111 be served on the alleged incapacitated person and on the alleged  
112 incapacitated person's attorney at least 24 hours before the  
113 hearing on the petition is commenced, unless the petitioner  
114 demonstrates that substantial harm to the alleged incapacitated  
115 person would occur if the 24-hour notice is given.

116 (9)-(8)(a) An emergency temporary guardian shall file a  
117 final report no later than 30 days after the expiration of the  
118 emergency temporary guardianship.

119 (b) A court may not authorize any final payment of the  
120 emergency temporary guardian fees or the fees of his or her  
121 attorney until the final report is filed.

122 (c)1. If the final report is not timely filed, the court  
123 shall issue to the emergency temporary guardian an order to show  
124 cause which requires the emergency temporary guardian to appear  
125 before the court and explain why the court should not take  
126 further action. The order must specify the time and place of the



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127 hearing within a reasonable time after service of the order to  
128 allow for the preparation of a defense.

129 2. At any time before the hearing on the order to show  
130 cause, the court may suspend the emergency temporary guardian if  
131 he or she has become a successor guardian, appoint a guardian ad  
132 litem, or issue any other appropriate order to protect the  
133 physical or mental health, safety, or property of the ward. A  
134 copy of any such order shall be transmitted by the court or  
135 under its direction to all parties at the time of entry of the  
136 order or injunction.

137 3. After the hearing on the order to show cause, the court  
138 may impose sanctions on the emergency temporary guardian or take  
139 any other action authorized by law, including, but not limited  
140 to, entering a judgment of contempt; ordering an accounting;  
141 freezing assets; referring the case to local law enforcement  
142 agencies or the state attorney; filing an abuse, neglect, or  
143 exploitation complaint with the Department of Children and  
144 Families; and initiating proceedings to remove the emergency  
145 temporary guardian if he or she has become a successor guardian.

146 (d) ~~(b)~~ If an emergency temporary guardian is a guardian for  
147 the property, the final report must consist of a verified  
148 inventory of the property, as provided in s. 744.365, as of the  
149 date the letters of emergency temporary guardianship were  
150 issued, a final accounting that gives a full and correct account  
151 of the receipts and disbursements of all the property of the  
152 ward over which the guardian had control, and a statement of the  
153 property of the ward on hand at the end of the emergency  
154 temporary guardianship. If the emergency temporary guardian  
155 becomes the successor guardian of the property, the final report



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156 must satisfy the requirements of the initial guardianship report  
157 for the guardian of the property as provided in s. 744.362.

158 (e)~~(e)~~ If the emergency temporary guardian is a guardian of  
159 the person, the final report must summarize the activities of  
160 the temporary guardian with regard to residential placement,  
161 medical condition, mental health and rehabilitative services,  
162 and the social condition of the ward to the extent of the  
163 authority granted to the temporary guardian in the letters of  
164 guardianship. If the emergency temporary guardian becomes the  
165 successor guardian of the person, the report must satisfy the  
166 requirements of the initial report for a guardian of the person  
167 as stated in s. 744.362.

168 (f)~~(d)~~ A copy of the final report of the emergency  
169 temporary guardianship shall be served on the successor guardian  
170 and the ward.

171 Section 7. Subsection (7) is added to section 744.309,  
172 Florida Statutes, to read:

173 744.309 Who may be appointed guardian of a resident ward.-

174 (7) FOR-PROFIT CORPORATE GUARDIAN.-A for-profit corporate  
175 guardian existing under the laws of this state is qualified to  
176 act as guardian of a ward if the entity is qualified to do  
177 business in the state, is wholly owned by the person who is the  
178 circuit's public guardian in the circuit where the corporate  
179 guardian is appointed, and has met the registration requirements  
180 of s. 744.1083, provided that the for-profit corporate guardian:

181 (a) Posts and maintains a blanket fiduciary bond of at  
182 least \$250,000 with the clerk of the circuit court in the county  
183 in which the corporate guardian has its principal place of  
184 business. The corporate guardian shall provide proof of the



185 fiduciary bond to the clerks of each additional circuit court in  
186 which he or she is serving as a guardian. The bond must cover  
187 all wards for whom the corporation has been appointed as a  
188 guardian at any given time. The liability of the provider of the  
189 bond is limited to the face value of the bond, regardless of the  
190 number of wards for whom the corporation is acting as a  
191 guardian. The terms of the bond must cover the acts or omissions  
192 of each agent or employee of the corporation who has direct  
193 contact with the ward or access to the assets of the  
194 guardianship. The bond must be payable to the Governor and his  
195 or her successors in office and be conditioned on the faithful  
196 performance of all duties of a guardian under this chapter. The  
197 bond is in lieu of and not in addition to the bond required  
198 under s. 744.1085 but is in addition to any bonds required under  
199 s. 744.351. The expenses incurred to satisfy the bonding  
200 requirements of this section may not be paid with the assets of  
201 any ward; or

202 (b) Maintains a liability insurance policy that covers any  
203 losses sustained by the guardianship caused by errors,  
204 omissions, or any intentional misconduct committed by the  
205 corporation's officers or agents. The policy must cover all  
206 wards for whom the corporation is acting as a guardian agent for  
207 losses up to \$250,000. The terms of the policy must cover acts  
208 or omissions of each agent or employee of the corporation who  
209 has direct contact with the principal or access to the assets of  
210 the guardianship. The corporate guardian shall provide proof of  
211 the fiduciary bond to the clerk of each additional circuit court  
212 in which he or she is serving as a guardian. A for-profit  
213 corporation appointed as guardian before July 1, 2015, is also





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214 qualified to serve as a guardian in the particular guardianships  
215 in which the corporation has already been appointed as guardian.

216 Section 8. Section 744.3115, Florida Statutes, is amended  
217 to read:

218 744.3115 Advance directives for health care.—In each  
219 proceeding in which a guardian is appointed under this chapter,  
220 the court shall determine whether the ward, prior to incapacity,  
221 has executed any valid advance directive under chapter 765. If  
222 any advance directive exists, the court shall specify in its  
223 order and letters of guardianship what authority, if any, the  
224 guardian shall exercise over the ward with regard to health care  
225 decisions and what authority, if any, the surrogate shall  
226 continue to exercise over the ward with regard to health care  
227 decisions surrogate. Pursuant to the grounds listed in s.  
228 765.105, the court, upon its own motion, may, with notice to the  
229 surrogate and any other appropriate parties, modify or revoke  
230 the authority of the surrogate to make health care decisions for  
231 the ward. Any order revoking or modifying the authority of the  
232 surrogate must be supported by specific written findings of  
233 fact. If the court order provides that the guardian is  
234 responsible for making health care decisions for the ward, the  
235 guardian shall assume the responsibilities of the surrogate  
236 which are provided in s. 765.205. For purposes of this section,  
237 the term "health care decision" has the same meaning as in s.  
238 765.101.

239 Section 9. Section 744.312, Florida Statutes, is reordered  
240 and amended to read:

241 744.312 Considerations in appointment of guardian.—

242 (1)(4) If the person designated is qualified to serve



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243 pursuant to s. 744.309, the court shall appoint any standby  
244 guardian or preneed guardian, unless the court determines that  
245 appointing such person is contrary to the best interests of the  
246 ward.

247 (2) ~~(1)~~ If a guardian cannot be appointed under subsection  
248 (1) ~~Subject to the provisions of subsection (4)~~, the court may  
249 appoint any person who is fit and proper and qualified to act as  
250 guardian, whether related to the ward or not.

251 ~~(2)~~ The court shall give preference to the appointment of a  
252 person who:

253 (a) Is related by blood or marriage to the ward;

254 (b) Has educational, professional, or business experience  
255 relevant to the nature of the services sought to be provided;

256 (c) Has the capacity to manage the financial resources  
257 involved; or

258 (d) Has the ability to meet the requirements of the law and  
259 the unique needs of the individual case.

260 (3) The court shall also:

261 (a) Consider the wishes expressed by an incapacitated  
262 person as to who shall be appointed guardian. ~~†~~

263 (b) Consider the preference of a minor who is age 14 or  
264 over as to who should be appointed guardian. ~~†~~

265 (c) Consider any person designated as guardian in any will  
266 in which the ward is a beneficiary.

267 (d) Consider the wishes of the ward's next of kin, when the  
268 ward cannot express a preference.

269 (4) Except when a standby guardian or a preneed guardian is  
270 appointed by the court:

271 (a) In each case when a court appoints a professional



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272 guardian and does not use a rotation system for such  
273 appointment, the court must make specific findings of fact  
274 stating why the person was selected as guardian in the  
275 particular matter involved. The findings must reference each of  
276 the factors listed in subsections (2) and (3).

277 (b) An emergency temporary guardian who is a professional  
278 guardian may not be appointed as the permanent guardian of a  
279 ward unless one of the next of kin of the alleged incapacitated  
280 person or the ward requests that the professional guardian be  
281 appointed as permanent guardian. The court may waive the  
282 limitations of this paragraph if the special requirements of the  
283 guardianship demand that the court appoint a guardian because he  
284 or she has special talent or specific prior experience. The  
285 court must make specific findings of fact that justify a finding  
286 that there are special requirements requiring an appointment  
287 without reference to this limitation.

288 (5) The court may not give preference to the appointment of  
289 a person under subsection (2) based solely on the fact that such  
290 person was appointed by the court to serve as an emergency  
291 temporary guardian.

292 Section 10. Section 744.3203, Florida Statutes, is created  
293 to read:

294 744.3203 Suspension of power of attorney before incapacity  
295 determination.—

296 (1) At any time during proceedings to determine incapacity  
297 but before the entry of an order determining incapacity, the  
298 authority granted under an alleged incapacitated person's power  
299 of attorney to a parent, spouse, child, or grandchild is  
300 suspended when the petitioner files a motion stating that a



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301 specific power of attorney should be suspended for any of the  
302 following grounds:

303 (a) The agent's decisions are not in accord with the  
304 alleged incapacitated person's known desires.

305 (b) The power of attorney is invalid.

306 (c) The agent has failed to discharge his or her duties or  
307 incapacity or illness renders the agent incapable of discharging  
308 duties.

309 (d) The agent has abused powers.

310 (e) There is a danger that the property of the alleged  
311 incapacitated person may be wasted, misappropriated, or lost  
312 unless the authority under the power of attorney is suspended.

313  
314 Grounds for suspending a power of attorney do not include the  
315 existence of a dispute between the agent and the petitioner  
316 which is more appropriate for resolution in some other forum or  
317 a legal proceeding other than a guardianship proceeding.

318 (2) The motion must:

319 (a) Identify one or more of the grounds in subsection (1);

320 (b) Include specific statements of fact showing that  
321 grounds exist to justify the relief sought; and

322 (c) Include the following statement: "Under penalties of  
323 perjury, I declare that I have read the foregoing motion and  
324 that the facts stated in it are true to the best of my knowledge  
325 and belief," followed by the signature of the petitioner.

326 (3) Upon the filing of a response to the motion by the  
327 agent under the power of attorney, the court shall schedule the  
328 motion for an expedited hearing. Unless an emergency arises and  
329 the agent's response sets forth the nature of the emergency, the



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330 property or matter involved, and the power to be exercised by  
331 the agent, notice must be given to all interested persons, the  
332 alleged incapacitated person, and the alleged incapacitated  
333 person's attorney. The court order following the hearing must  
334 set forth what powers the agent is permitted to exercise, if  
335 any, pending the outcome of the petition to determine  
336 incapacity.

337 (4) In addition to any other remedy authorized by law, a  
338 court may award reasonable attorney fees and costs to an agent  
339 who successfully challenges the suspension of the power of  
340 attorney if the petitioner's motion was made in bad faith.

341 (5) The suspension of authority granted to persons other  
342 than a parent, spouse, child, or grandchild shall be as provided  
343 in s. 709.2109.

344 Section 11. Subsection (6) and paragraph (c) of subsection  
345 (7) of section 744.331, Florida Statutes, are amended to read:

346 744.331 Procedures to determine incapacity.-

347 (6) ORDER DETERMINING INCAPACITY.-If, after making findings  
348 of fact on the basis of clear and convincing evidence, the court  
349 finds that a person is incapacitated with respect to the  
350 exercise of a particular right, or all rights, the court shall  
351 enter a written order determining such incapacity. In  
352 determining incapacity, the court shall consider the person's  
353 unique needs and abilities and may only remove those rights that  
354 the court finds the person does not have the capacity to  
355 exercise. A person is determined to be incapacitated only with  
356 respect to those rights specified in the order.

357 (a) The court shall make the following findings:

358 1. The exact nature and scope of the person's incapacities;



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359           2. The exact areas in which the person lacks capacity to  
360 make informed decisions about care and treatment services or to  
361 meet the essential requirements for her or his physical or  
362 mental health or safety;

363           3. The specific legal disabilities to which the person is  
364 subject; and

365           4. The specific rights that the person is incapable of  
366 exercising.

367           (b) When an order determines that a person is incapable of  
368 exercising delegable rights, the court must consider and find  
369 whether there is an alternative to guardianship that will  
370 sufficiently address the problems of the incapacitated person. A  
371 ~~guardian must be appointed to exercise the incapacitated~~  
372 ~~person's delegable rights unless the court finds there is an~~  
373 ~~alternative.~~ A guardian may not be appointed if the court finds  
374 there is an alternative to guardianship which will sufficiently  
375 address the problems of the incapacitated person. If the court  
376 finds there is not an alternative to guardianship that  
377 sufficiently addresses the problems of the incapacitated person,  
378 a guardian must be appointed to exercise the incapacitated  
379 person's delegable rights.

380           (c) In determining that a person is totally incapacitated,  
381 the order must contain findings of fact demonstrating that the  
382 individual is totally without capacity to care for herself or  
383 himself or her or his property.

384           (d) An order adjudicating a person to be incapacitated  
385 constitutes proof of such incapacity until further order of the  
386 court.

387           (e) After the order determining that the person is



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388 incapacitated has been filed with the clerk, it must be served  
389 on the incapacitated person. The person is deemed incapacitated  
390 only to the extent of the findings of the court. The filing of  
391 the order is notice of the incapacity. An incapacitated person  
392 retains all rights not specifically removed by the court.

393 (f) Upon the filing of a verified statement by an  
394 interested person stating:

395 1. That he or she has a good faith belief that the alleged  
396 incapacitated person's trust, trust amendment, or durable power  
397 of attorney is invalid; and

398 2. A reasonable factual basis for that belief,

399  
400 the trust, trust amendment, or durable power of attorney shall  
401 not be deemed to be an alternative to the appointment of a  
402 guardian. The appointment of a guardian does not limit the  
403 court's power to determine that certain authority granted by a  
404 durable power of attorney is to remain exercisable by the agent  
405 ~~attorney in fact~~.

406 (7) FEES.—

407 (c) If the petition is dismissed or denied:~~7~~

408 1. The fees of the examining committee shall be paid upon  
409 court order as expert witness fees under s. 29.004(6).

410 2. Costs and attorney ~~attorney's~~ fees of the proceeding may  
411 be assessed against the petitioner if the court finds the  
412 petition to have been filed in bad faith. The petitioner shall  
413 also reimburse the state courts system for any amounts paid  
414 under subparagraph 1. upon such a finding.

415 Section 12. Subsection (4) of section 744.344, Florida  
416 Statutes, is amended to read:



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417 744.344 Order of appointment.—

418 (4) If a petition for the appointment of a guardian has not  
419 been filed or ruled upon at the time of the hearing on the  
420 petition to determine capacity, the court may appoint an  
421 emergency temporary guardian in the manner and for the purposes  
422 specified in s. 744.3031.

423 Section 13. Section 744.345, Florida Statutes, is amended  
424 to read:

425 744.345 Letters of guardianship.—Letters of guardianship  
426 shall be issued to the guardian and shall specify whether the  
427 guardianship pertains to the person, or the property, or both,  
428 of the ward. The letters must state whether the guardianship is  
429 plenary or limited, and, if limited, the letters must state the  
430 powers and duties of the guardian. ~~If the guardianship is~~  
431 ~~limited,~~ The letters shall state whether or not and to what  
432 extent the guardian is authorized to act on behalf of the ward  
433 with regard to any advance directive previously executed by the  
434 ward.

435 Section 14. Section 744.359, Florida Statutes, is created  
436 to read:

437 744.359 Abuse, neglect, or exploitation by a guardian.—

438 (1) A guardian may not abuse, neglect, or exploit a ward.

439 (2) A guardian has committed exploitation when the

440 guardian:

441 (a) Commits fraud in obtaining appointment as a guardian;

442 (b) Abuses his or her powers; or

443 (c) Wastes, embezzles, or intentionally mismanages the  
444 assets of the ward.

445 (3) A person who believes that a guardian is abusing,





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446 neglecting, or exploiting a ward shall report the incident to  
447 the central abuse hotline of the Department of Children and  
448 Families.

449 (4) This section shall be interpreted in conformity with s.  
450 825.103.

451 Section 15. Section 744.361, Florida Statutes, is amended  
452 to read:

453 744.361 Powers and duties of guardian.—

454 (1) The guardian of an incapacitated person is a fiduciary  
455 and may exercise only those rights that have been removed from  
456 the ward and delegated to the guardian. The guardian of a minor  
457 shall exercise the powers of a plenary guardian.

458 (2) The guardian shall act within the scope of the  
459 authority granted by the court and as provided by law.

460 (3) The guardian shall act in good faith.

461 (4) A guardian may not act in a manner that is contrary to  
462 the ward's best interests under the circumstances.

463 (5) A guardian who has special skills or expertise, or is  
464 appointed in reliance upon the guardian's representation that  
465 the guardian has special skills or expertise, shall use those  
466 special skills or expertise when acting on behalf of the ward.

467 (6)~~(2)~~ The guardian shall file an initial guardianship  
468 report in accordance with s. 744.362.

469 (7)~~(3)~~ The guardian shall file a guardianship report  
470 annually in accordance with s. 744.367.

471 (8)~~(4)~~ The guardian of the person shall implement the  
472 guardianship plan.

473 (9)~~(5)~~ When two or more guardians have been appointed, the  
474 guardians shall consult with each other.



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475            (10)~~(6)~~ A guardian who is given authority over any property  
476 of the ward shall:

477            (a) Protect and preserve the property and invest it  
478 prudently as provided in chapter 518, apply it as provided in s.  
479 744.397, and keep clear, distinct, and accurate records of the  
480 administration of the ward's property ~~account for it faithfully.~~

481            (b) Perform all other duties required of him or her by law.

482            (c) At the termination of the guardianship, deliver the  
483 property of the ward to the person lawfully entitled to it.

484            (11)~~(7)~~ The guardian shall observe the standards in dealing  
485 with the guardianship property that would be observed by a  
486 prudent person dealing with the property of another, ~~and, if the~~  
487 ~~guardian has special skills or is named guardian on the basis of~~  
488 ~~representations of special skills or expertise, he or she is~~  
489 ~~under a duty to use those skills.~~

490            (12)~~(8)~~ The guardian, if authorized by the court, shall  
491 take possession of all of the ward's property and of the rents,  
492 income, issues, and profits from it, whether accruing before or  
493 after the guardian's appointment, and of the proceeds arising  
494 from the sale, lease, or mortgage of the property or of any  
495 part. All of the property and the rents, income, issues, and  
496 profits from it are assets in the hands of the guardian for the  
497 payment of debts, taxes, claims, charges, and expenses of the  
498 guardianship and for the care, support, maintenance, and  
499 education of the ward or the ward's dependents, as provided for  
500 under the terms of the guardianship plan or by law.

501            (13) Recognizing that every individual has unique needs and  
502 abilities, a guardian who is given authority over a ward's  
503 person shall, as appropriate under the circumstances:



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504 (a) Consider the expressed desires of the ward as known by  
505 the guardian when making decisions that affect the ward.

506 (b) Allow the ward to maintain contact with family and  
507 friends unless the guardian believes that such contact may cause  
508 harm to the ward.

509 (c) Not restrict the physical liberty of the ward more than  
510 reasonably necessary to protect the ward or another person from  
511 serious physical injury, illness, or disease.

512 (d) Assist the ward in developing or regaining his or her  
513 own capacity, if medically possible.

514 (e) Notify the court if the guardian believes that the ward  
515 has regained capacity and that one or more of the rights that  
516 have been removed should be restored to the ward.

517 (f) To the extent applicable, make provision for the  
518 medical, mental, rehabilitative, or personal care services for  
519 the welfare of the ward.

520 (g) To the extent applicable, acquire a clear understanding  
521 of the risks and benefits of a recommended course of health care  
522 treatment before making a health care decision.

523 (h) Evaluate the ward's medical and health care options,  
524 financial resources, and desires when making residential  
525 decisions that are best suited for the current needs of the  
526 ward.

527 (i) Advocate on behalf of the ward in institutional and  
528 other residential settings and regarding access to home and  
529 community-based services.

530 (j) Acquire an understanding of the available residential  
531 options and give priority to home and other community-based  
532 services and settings when not inconsistent with the person's



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533 goals, needs, and preferences.

534 ~~(14)(9)~~ A professional guardian must ensure that each of  
535 the guardian's wards is personally visited by the guardian or  
536 one of the guardian's professional staff at least once each  
537 calendar quarter. During the personal visit, the guardian or the  
538 guardian's professional staff person shall assess:

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

540 (b) The appropriateness of the ward's current living  
541 situation.

542 (c) The need for any additional services and the necessity  
543 for continuation of existing services, taking into consideration  
544 all aspects of social, psychological, educational, direct  
545 service, health, and personal care needs.

546 (d) The nature and extent of visitation and communication  
547 with the ward's family and friends.

548  
549 This subsection does not apply to a professional guardian who  
550 has been appointed only as guardian of the property.

551 Section 16. Subsection (1) of section 744.367, Florida  
552 Statutes, is amended to read:

553 744.367 Duty to file annual guardianship report.—

554 (1) Unless the court requires filing on a calendar-year  
555 basis, each guardian of the person shall file with the court an  
556 annual guardianship plan at least 60 days, but no more than  
557 within 90 days, before ~~after~~ the last day of the anniversary  
558 month that the letters of guardianship were signed, and the plan  
559 must cover the coming fiscal year, ending on the last day in  
560 such anniversary month. If the court requires calendar-year  
561 filing, the guardianship plan for the forthcoming calendar year



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562 must be filed on or after September 1 but no later than December  
563 1 of the current year ~~before April 1 of each year.~~

564 Section 17. Subsection (8) of section 744.369, Florida  
565 Statutes, is amended to read:

566 744.369 Judicial review of guardianship reports.—

567 (8) The approved report constitutes the authority for the  
568 guardian to act in the forthcoming year. The powers of the  
569 guardian are limited by the terms of the report. The annual  
570 report may not grant additional authority to the guardian  
571 without a hearing, as provided for in s. 744.331, to determine  
572 that the ward is incapacitated to act in that matter. Unless the  
573 court orders otherwise, the guardian may continue to act under  
574 authority of the last-approved report until the forthcoming  
575 year's report is approved.

576 Section 18. Subsection (1) of section 744.3715, Florida  
577 Statutes, is amended to read:

578 744.3715 Petition for interim judicial review.—

579 (1) At any time, any interested person, including the ward,  
580 may petition the court for review alleging that the guardian is  
581 not complying with the guardianship plan, ~~or~~ is exceeding his or  
582 her authority under the guardianship plan, is acting in a manner  
583 contrary to s. 744.361, is denying visitation between the ward  
584 and his or her relatives in violation of s. 744.361(13), or ~~and~~  
585 ~~the guardian~~ is not acting in the best interest of the ward. The  
586 petition for review must state the nature of the objection to  
587 the guardian's action or proposed action. Upon the filing of any  
588 such petition, the court shall review the petition and act upon  
589 it expeditiously.

590 Section 19. Paragraphs (a) and (b) of subsection (3) of



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591 section 744.464, Florida Statutes, are amended, and subsection  
592 (4) is added to that section, to read:

593 744.464 Restoration to capacity.—

594 (3) ORDER OF RESTORATION.—

595 (a) If no objections are filed, and the court is satisfied  
596 that with the medical examination establishes by a preponderance  
597 of the evidence that restoration of all or some of the ward's  
598 rights is appropriate, the court shall enter an order of  
599 restoration of capacity, restoring all or some of the rights  
600 which were removed from the ward in accordance with those  
601 findings. ~~The order must be issued within 30 days after the~~  
602 ~~medical report is filed.~~

603 (b) At the conclusion of a hearing, conducted pursuant to  
604 s. 744.1095, the court shall make specific findings of fact and,  
605 based on a preponderance of the evidence, enter an order either  
606 denying the suggestion of capacity or restoring all or some of  
607 the rights which were removed from the ward. The ward has the  
608 burden of proving by a preponderance of the evidence that the  
609 restoration of capacity is warranted.

610 (4) TIMELINESS OF HEARING.—The court shall give priority to  
611 any suggestion of capacity and shall advance the cause on the  
612 calendar.

613 Section 20. Sections 709.2109 and 744.3203, Florida  
614 Statutes, as created by this act, apply to all proceedings filed  
615 on or after July 1, 2015. The amendments made by this act to ss.  
616 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,  
617 744.3115, 744.312, 744.331, 744.344, 744.345, 744.359, 744.361,  
618 744.367, 744.369, 744.3715, and 744.464, Florida Statutes, apply  
619 to all proceedings pending on July 1, 2015.



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620 Section 21. This act shall take effect July 1, 2015.

621

622 ===== T I T L E A M E N D M E N T =====

623 And the title is amended as follows:

624 Delete everything before the enacting clause

625 and insert:

626 A bill to be entitled

627 An act relating to guardianship proceedings; amending  
628 s. 709.2109, F.S.; requiring the filing of a motion  
629 before termination or suspension of a power of  
630 attorney in proceedings to determine a principal's  
631 incapacity or for appointment of a guardian advocate  
632 under certain circumstances; amending ss. 744.107 and  
633 744.1075, F.S.; authorizing a court to appoint the  
634 office of criminal conflict and civil regional counsel  
635 as a court monitor in guardianship proceedings;  
636 amending s. 744.108, F.S.; providing that fees and  
637 costs incurred by an attorney who has rendered  
638 services to a ward in compensation proceedings are  
639 payable from guardianship assets; providing that  
640 expert testimony is not required in proceedings to  
641 determine compensation for an attorney or guardian;  
642 requiring a person offering expert testimony to  
643 provide notice to interested persons; providing that  
644 expert witness fees are recoverable by the prevailing  
645 interested person; amending s. 744.3025, F.S.;

646 providing that a court may appoint a guardian ad litem  
647 to represent a minor if necessary to protect the  
648 minor's interest in a settlement; providing that a



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649 settlement of a minor's claim is subject to certain  
650 confidentiality provisions; amending s. 744.3031,  
651 F.S.; requiring notification of an alleged  
652 incapacitated person and such person's attorney of a  
653 petition for appointment of an emergency temporary  
654 guardian before a hearing on the petition commences;  
655 prohibiting the final payment of the emergency  
656 temporary guardian fees and his or her attorney fees  
657 until the final report is filed; requiring a court to  
658 issue an order to show cause to an emergency temporary  
659 guardian who fails to timely file his or her final  
660 report; authorizing a court to take certain actions to  
661 protect the ward before a hearing on an order to show  
662 cause; requiring a copy of such order to be  
663 transmitted to certain parties; authorizing the court  
664 to impose sanctions on the emergency temporary  
665 guardian or take certain other actions after a show  
666 cause hearing; amending s. 744.309, F.S.; providing  
667 that certain for-profit corporations may act as  
668 guardian of a person; providing conditions; requiring  
669 the posting and maintenance of a fiduciary bond;  
670 limiting liability; requiring the corporation to  
671 maintain certain insurance coverage; providing for  
672 certain grandfathered guardianships; amending s.  
673 744.3115, F.S.; directing the court to specify  
674 authority for health care decisions with respect to a  
675 ward's advance directive; amending s. 744.312, F.S.;  
676 prohibiting a court from giving preference to the  
677 appointment of certain persons as guardians; providing





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678 requirements for the appointment of professional  
679 guardians; amending s. 744.3203, F.S.; providing  
680 grounds for filing a motion for suspension of a power  
681 of attorney before determination of incapacity;  
682 providing criteria for such motion; requiring a  
683 hearing under certain conditions; providing for the  
684 award of attorney fees and costs; amending s. 744.331,  
685 F.S.; directing the court to consider certain factors  
686 when determining incapacity; requiring that the  
687 examining committee be paid from state funds as court-  
688 appointed expert witnesses if a petition for  
689 incapacity is dismissed; requiring that a petitioner  
690 reimburse the state for such expert witness fees if  
691 the court finds the petition to have been filed in bad  
692 faith; amending s. 744.344, F.S.; providing conditions  
693 under which the court is authorized to appoint an  
694 emergency temporary guardian; amending s. 744.345,  
695 F.S.; revising provisions relating to letters of  
696 guardianship; creating s. 744.359, F.S.; prohibiting  
697 abuse, neglect, or exploitation of a ward by a  
698 guardian; requiring reporting thereof to the  
699 Department of Children and Families central abuse  
700 hotline; providing for interpretation; amending s.  
701 744.361, F.S.; providing additional powers and duties  
702 of a guardian; amending s. 744.367, F.S.; revising the  
703 period during which a guardian must file an annual  
704 guardianship plan with the court; amending s. 744.369,  
705 F.S.; providing for the continuance of a guardian's  
706 authority to act under an expired annual report under



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707 certain circumstances; amending s. 744.3715, F.S.;

708 providing that an interested party may petition the

709 court regarding a guardian's failure to comply with

710 the duties of a guardian; amending s. 744.464, F.S.;

711 establishing the burden of proof for determining

712 restoration of capacity of a ward in pending

713 guardianship cases; requiring a court to advance such

714 cases on the calendar; providing applicability;

715 providing an effective date.