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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
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13 withdrawn or the court enters an order authorizing the agent to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
123 (c) ~~(b)~~ If an emergency temporary guardian is a guardian for
124 the property, the final report must consist of a verified
125 inventory of the property, as provided in s. 744.365, as of the
126 date the letters of emergency temporary guardianship were



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127 issued, a final accounting that gives a full and correct account
128 of the receipts and disbursements of all the property of the
129 ward over which the guardian had control, and a statement of the
130 property of the ward on hand at the end of the emergency
131 temporary guardianship. If the emergency temporary guardian
132 becomes the successor guardian of the property, the final report
133 must satisfy the requirements of the initial guardianship report
134 for the guardian of the property as provided in s. 744.362.

135 (d)~~(e)~~ If the emergency temporary guardian is a guardian of
136 the person, the final report must summarize the activities of
137 the temporary guardian with regard to residential placement,
138 medical condition, mental health and rehabilitative services,
139 and the social condition of the ward to the extent of the
140 authority granted to the temporary guardian in the letters of
141 guardianship. If the emergency temporary guardian becomes the
142 successor guardian of the person, the report must satisfy the
143 requirements of the initial report for a guardian of the person
144 as stated in s. 744.362.

145 (e)~~(d)~~ A copy of the final report of the emergency
146 temporary guardianship shall be served on the successor guardian
147 and the ward.

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

150 744.309 Who may be appointed guardian of a resident ward.-

151 (7) FOR-PROFIT CORPORATE GUARDIAN.-A for-profit corporate
152 guardian existing under the laws of this state is qualified to
153 act as guardian of a ward if the entity is qualified to do
154 business in the state, is wholly owned by the person who is the
155 circuit's public guardian in the circuit where the corporate



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156 guardian is appointed, has met the registration requirements of
157 s. 744.1083, and posts and maintains a bond or insurance policy
158 under paragraph (a).

159 (a) The for-profit corporate guardian must meet one of the
160 following requirements:

161 1 Post and maintain a blanket fiduciary bond of at least
162 \$250,000 with the clerk of the circuit court in the county in
163 which the corporate guardian has its principal place of
164 business. The corporate guardian shall provide proof of the
165 fiduciary bond to the clerks of each additional circuit court in
166 which he or she is serving as a guardian. The bond must cover
167 all wards for whom the corporation has been appointed as a
168 guardian at any given time. The liability of the provider of the
169 bond is limited to the face value of the bond, regardless of the
170 number of wards for whom the corporation is acting as a
171 guardian. The terms of the bond must cover the acts or omissions
172 of each agent or employee of the corporation who has direct
173 contact with the ward or access to the assets of the
174 guardianship. The bond must be payable to the Governor and his
175 or her successors in office and be conditioned on the faithful
176 performance of all duties of a guardian under this chapter. The
177 bond is in lieu of and not in addition to the bond required
178 under s. 744.1085 but is in addition to any bonds required under
179 s. 744.351. The expenses incurred to satisfy the bonding
180 requirements of this section may not be paid with the assets of
181 any ward; or

182 2. Maintain a liability insurance policy that covers any
183 losses sustained by the guardianship caused by errors,
184 omissions, or any intentional misconduct committed by the



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185 corporation's officers or agents. The policy must cover all
186 wards for whom the corporation is acting as a guardian for
187 losses up to \$250,000. The terms of the policy must cover acts
188 or omissions of each agent or employee of the corporation who
189 has direct contact with the ward or access to the assets of the
190 guardianship. The corporate guardian shall provide proof of the
191 fiduciary bond to the clerk of each circuit court in which he or
192 she is serving as a guardian.

193 (b) A for-profit corporation appointed as guardian before
194 July 1, 2015, is also qualified to serve as a guardian in the
195 particular guardianships in which the corporation has already
196 been appointed as guardian.

197 Section 8. Section 744.3115, Florida Statutes, is amended
198 to read:

199 744.3115 Advance directives for health care.—In each
200 proceeding in which a guardian is appointed under this chapter,
201 the court shall determine whether the ward, prior to incapacity,
202 has executed any valid advance directive under chapter 765. If
203 any advance directive exists, the court shall specify in its
204 order and letters of guardianship what authority, if any, the
205 guardian shall exercise over the ward with regard to health care
206 decisions and what authority, if any, the surrogate shall
207 continue to exercise over the ward with regard to health care
208 decisions surrogate. Pursuant to the grounds listed in s.
209 765.105, the court, upon its own motion, may, with notice to the
210 surrogate and any other appropriate parties, modify or revoke
211 the authority of the surrogate to make health care decisions for
212 the ward. Any order revoking or modifying the authority of the
213 surrogate must be supported by specific written findings of



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214 fact. If the court order provides that the guardian is
215 responsible for making health care decisions for the ward, the
216 guardian shall assume the responsibilities of the surrogate
217 which are provided in s. 765.205. For purposes of this section,
218 the term "health care decision" has the same meaning as in s.
219 765.101.

220 Section 9. Section 744.312, Florida Statutes, is reordered
221 and amended to read:

222 744.312 Considerations in appointment of guardian.—

223 (1)~~(4)~~ If the person designated is qualified to serve
224 pursuant to s. 744.309, the court shall appoint any standby
225 guardian or preneed guardian, unless the court determines that
226 appointing such person is contrary to the best interests of the
227 ward.

228 (2)~~(1)~~ If a guardian cannot be appointed under subsection
229 (1) ~~Subject to the provisions of subsection (4)~~, the court may
230 appoint any person who is fit and proper and qualified to act as
231 guardian, whether related to the ward or not.

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

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

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

237 (c) Has the capacity to manage the financial resources
238 involved; or

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

241 (3) The court shall also:

242 (a) Consider the wishes expressed by an incapacitated



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243 person as to who shall be appointed guardian.†

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

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

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

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

252 (a) In each case when a court appoints a professional
253 guardian and does not use a rotation system for such
254 appointment, the court must make specific findings of fact
255 stating why the person was selected as guardian in the
256 particular matter involved. The findings must reference each of
257 the factors listed in subsections (2) and (3).

258 (b) An emergency temporary guardian who is a professional
259 guardian may not be appointed as the permanent guardian of a
260 ward unless one of the next of kin of the alleged incapacitated
261 person or the ward requests that the professional guardian be
262 appointed as permanent guardian. The court may waive the
263 limitations of this paragraph if the special requirements of the
264 guardianship demand that the court appoint a guardian because he
265 or she has special talent or specific prior experience. The
266 court must make specific findings of fact that justify waiving
267 the limitations of this paragraph.

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



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272 Section 10. Section 744.3203, Florida Statutes, is created
273 to read:

274 744.3203 Suspension of power of attorney before incapacity
275 determination.—

276 (1) At any time during proceedings to determine incapacity
277 but before the entry of an order determining incapacity, the
278 authority granted under an alleged incapacitated person's power
279 of attorney to a parent, spouse, child, or grandchild is
280 suspended when the petitioner files a motion stating that a
281 specific power of attorney should be suspended for any of the
282 following grounds:

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

285 (b) The power of attorney is invalid.

286 (c) The agent has failed to discharge his or her duties or
287 incapacity or illness renders the agent incapable of discharging
288 duties.

289 (d) The agent has abused powers.

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

293
294 Grounds for suspending a power of attorney do not include the
295 existence of a dispute between the agent and the petitioner
296 which is more appropriate for resolution in some other forum or
297 a legal proceeding other than a guardianship proceeding.

298 (2) The motion must:

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

300 (b) Include specific statements of fact showing that



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301 grounds exist to justify the relief sought; and

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

306 (3) Upon the filing of a response to the motion by the
307 agent under the power of attorney, the court shall schedule the
308 motion for an expedited hearing. Unless an emergency arises and
309 the agent's response sets forth the nature of the emergency, the
310 property or matter involved, and the power to be exercised by
311 the agent, notice must be given to all interested persons, the
312 alleged incapacitated person, and the alleged incapacitated
313 person's attorney. The court order following the hearing must
314 set forth what powers the agent is permitted to exercise, if
315 any, pending the outcome of the petition to determine
316 incapacity.

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

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

324 Section 11. Subsection (6) and paragraph (c) of subsection
325 (7) of section 744.331, Florida Statutes, are amended to read:
326 744.331 Procedures to determine incapacity.—

327 (6) ORDER DETERMINING INCAPACITY.—If, after making findings
328 of fact on the basis of clear and convincing evidence, the court
329 finds that a person is incapacitated with respect to the



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330 exercise of a particular right, or all rights, the court shall
331 enter a written order determining such incapacity. In
332 determining incapacity, the court shall consider the person's
333 unique needs and abilities and may only remove those rights that
334 the court finds the person does not have the capacity to
335 exercise. A person is determined to be incapacitated only with
336 respect to those rights specified in the order.

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

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

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

343 3. The specific legal disabilities to which the person is
344 subject; and

345 4. The specific rights that the person is incapable of
346 exercising.

347 (b) When an order determines that a person is incapable of
348 exercising delegable rights, the court must consider and find
349 whether there is an alternative to guardianship that will
350 sufficiently address the problems of the incapacitated person. ~~A~~
351 ~~guardian must be appointed to exercise the incapacitated~~
352 ~~person's delegable rights unless the court finds there is an~~
353 ~~alternative.~~ A guardian may not be appointed if the court finds
354 there is an alternative to guardianship which will sufficiently
355 address the problems of the incapacitated person. If the court
356 finds there is not an alternative to guardianship that
357 sufficiently addresses the problems of the incapacitated person,
358 a guardian must be appointed to exercise the incapacitated



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359 person's delegable rights.

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

364 (d) An order adjudicating a person to be incapacitated
365 constitutes proof of such incapacity until further order of the
366 court.

367 (e) After the order determining that the person is
368 incapacitated has been filed with the clerk, it must be served
369 on the incapacitated person. The person is deemed incapacitated
370 only to the extent of the findings of the court. The filing of
371 the order is notice of the incapacity. An incapacitated person
372 retains all rights not specifically removed by the court.

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

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

378 2. A reasonable factual basis for that belief,

379
380 the trust, trust amendment, or durable power of attorney shall
381 not be deemed to be an alternative to the appointment of a
382 guardian. The appointment of a guardian does not limit the
383 court's power to determine that certain authority granted by a
384 durable power of attorney is to remain exercisable by the agent
385 ~~attorney in fact.~~

386 (7) FEES.—

387 (c) If the petition is dismissed or denied:



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

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

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

397 744.344 Order of appointment.—

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

403 Section 13. Section 744.345, Florida Statutes, is amended
404 to read:

405 744.345 Letters of guardianship.—Letters of guardianship
406 shall be issued to the guardian and shall specify whether the
407 guardianship pertains to the person, or the property, or both,
408 of the ward. The letters must state whether the guardianship is
409 plenary or limited, and, if limited, the letters must state the
410 powers and duties of the guardian. ~~If the guardianship is~~
411 ~~limited,~~ The letters shall state whether or not and to what
412 extent the guardian is authorized to act on behalf of the ward
413 with regard to any advance directive previously executed by the
414 ward.

415 Section 14. Section 744.359, Florida Statutes, is created
416 to read:



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417 744.359 Abuse, neglect, or exploitation by a guardian.-
418 (1) A guardian may not abuse, neglect, or exploit a ward.
419 (2) A guardian has committed exploitation when the
420 guardian:
421 (a) Commits fraud in obtaining appointment as a guardian;
422 (b) Abuses his or her powers; or
423 (c) Wastes, embezzles, or intentionally mismanages the
424 assets of the ward.
425 (3) A person who believes that a guardian is abusing,
426 neglecting, or exploiting a ward shall report the incident to
427 the central abuse hotline of the Department of Children and
428 Families.
429 (4) This section shall be interpreted in conformity with s.
430 825.103.
431 Section 15. Section 744.361, Florida Statutes, is amended
432 to read:
433 744.361 Powers and duties of guardian.-
434 (1) The guardian of an incapacitated person is a fiduciary
435 and may exercise only those rights that have been removed from
436 the ward and delegated to the guardian. The guardian of a minor
437 shall exercise the powers of a plenary guardian.
438 (2) The guardian shall act within the scope of the
439 authority granted by the court and as provided by law.
440 (3) The guardian shall act in good faith.
441 (4) A guardian may not act in a manner that is contrary to
442 the ward's best interests under the circumstances.
443 (5) A guardian who has special skills or expertise, or is
444 appointed in reliance upon the guardian's representation that
445 the guardian has special skills or expertise, shall use those



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446 special skills or expertise when acting on behalf of the ward.

447 ~~(6)(2)~~ The guardian shall file an initial guardianship
448 report in accordance with s. 744.362.

449 ~~(7)(3)~~ The guardian shall file a guardianship report
450 annually in accordance with s. 744.367.

451 ~~(8)(4)~~ The guardian of the person shall implement the
452 guardianship plan.

453 ~~(9)(5)~~ When two or more guardians have been appointed, the
454 guardians shall consult with each other.

455 ~~(10)(6)~~ A guardian who is given authority over any property
456 of the ward shall:

457 (a) Protect and preserve the property and invest it
458 prudently as provided in chapter 518, apply it as provided in s.
459 744.397, and keep clear, distinct, and accurate records of the
460 administration of the ward's property ~~account for it faithfully.~~

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

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

464 ~~(11)(7)~~ The guardian shall observe the standards in dealing
465 with the guardianship property that would be observed by a
466 prudent person dealing with the property of another, ~~and, if the~~
467 ~~guardian has special skills or is named guardian on the basis of~~
468 ~~representations of special skills or expertise, he or she is~~
469 ~~under a duty to use those skills.~~

470 ~~(12)(8)~~ The guardian, if authorized by the court, shall
471 take possession of all of the ward's property and of the rents,
472 income, issues, and profits from it, whether accruing before or
473 after the guardian's appointment, and of the proceeds arising
474 from the sale, lease, or mortgage of the property or of any



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475 part. All of the property and the rents, income, issues, and
476 profits from it are assets in the hands of the guardian for the
477 payment of debts, taxes, claims, charges, and expenses of the
478 guardianship and for the care, support, maintenance, and
479 education of the ward or the ward's dependents, as provided for
480 under the terms of the guardianship plan or by law.

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

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

486 (b) Allow the ward to maintain contact with family and
487 friends unless the guardian believes that such contact may cause
488 harm to the ward.

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

492 (d) Assist the ward in developing or regaining capacity, if
493 medically possible.

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

497 (f) To the extent applicable, make provision for the
498 medical, mental, rehabilitative, or personal care services for
499 the welfare of the ward.

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

503 (h) Evaluate the ward's medical and health care options,



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504 financial resources, and desires when making residential
505 decisions that are best suited for the current needs of the
506 ward.

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

510 (j) Acquire an understanding of the available residential
511 options and give priority to home and other community-based
512 services and settings when not inconsistent with the person's
513 goals, needs, and preferences.

514 (14)-(9) A professional guardian must ensure that each of
515 the guardian's wards is personally visited by the guardian or
516 one of the guardian's professional staff at least once each
517 calendar quarter. During the personal visit, the guardian or the
518 guardian's professional staff person shall assess:

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

520 (b) The appropriateness of the ward's current living
521 situation.

522 (c) The need for any additional services and the necessity
523 for continuation of existing services, taking into consideration
524 all aspects of social, psychological, educational, direct
525 service, health, and personal care needs.

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

528
529 This subsection does not apply to a professional guardian who
530 has been appointed only as guardian of the property.

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



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533 744.367 Duty to file annual guardianship report.—

534 (1) Unless the court requires filing on a calendar-year
535 basis, each guardian of the person shall file with the court an
536 annual guardianship plan at least 60 days, but no more than
537 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary
538 month that the letters of guardianship were signed, and the plan
539 must cover the coming fiscal year, ending on the last day in
540 such anniversary month. If the court requires calendar-year
541 filing, the guardianship plan for the forthcoming calendar year
542 must be filed on or after September 1 but no later than December
543 1 of the current year ~~before April 1 of each year.~~

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

546 744.369 Judicial review of guardianship reports.—

547 (8) The approved report constitutes the authority for the
548 guardian to act in the forthcoming year. The powers of the
549 guardian are limited by the terms of the report. The annual
550 report may not grant additional authority to the guardian
551 without a hearing, as provided for in s. 744.331, to determine
552 that the ward is incapacitated to act in that matter. Unless the
553 court orders otherwise, the guardian may continue to act under
554 authority of the last-approved report until the forthcoming
555 year's report is approved.

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

558 744.3715 Petition for interim judicial review.—

559 (1) At any time, any interested person, including the ward,
560 may petition the court for review alleging that the guardian is
561 not complying with the guardianship plan, ~~or~~ is exceeding his or



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562 her authority under the guardianship plan, is acting in a manner
563 contrary to s. 744.361, is denying visitation between the ward
564 and his or her relatives in violation of s. 744.361(13), or ~~and~~
565 ~~the guardian~~ is not acting in the best interest of the ward. The
566 petition for review must state the nature of the objection to
567 the guardian's action or proposed action. Upon the filing of any
568 such petition, the court shall review the petition and act upon
569 it expeditiously.

570 Section 19. Paragraphs (a) and (b) of subsection (3) of
571 section 744.464, Florida Statutes, are amended, and subsection
572 (4) is added to that section, to read:

573 744.464 Restoration to capacity.—

574 (3) ORDER OF RESTORATION.—

575 (a) If no objections are filed, and the court is satisfied
576 that with the medical examination establishes by a preponderance
577 of the evidence that restoration of all or some of the ward's
578 rights is appropriate, the court shall enter an order of
579 restoration of capacity, restoring all or some of the rights
580 which were removed from the ward in accordance with those
581 findings. ~~The order must be issued within 30 days after the~~
582 ~~medical report is filed.~~

583 (b) At the conclusion of a hearing, conducted pursuant to
584 s. 744.1095, the court shall make specific findings of fact and,
585 based on a preponderance of the evidence, enter an order either
586 denying the suggestion of capacity or restoring all or some of
587 the rights which were removed from the ward. The ward has the
588 burden of proving by a preponderance of the evidence that the
589 restoration of capacity is warranted.

590 (4) TIMELINESS OF HEARING.—The court shall give priority to



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591 any suggestion of capacity and shall advance the cause on the
592 calendar.

593 Section 20. Sections 709.2109 and 744.3203, Florida
594 Statutes, as created by this act, apply to all proceedings filed
595 on or after July 1, 2015. The amendments made by this act to ss.
596 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,
597 744.3115, 744.312, 744.331, 744.344, 744.345, 744.359, 744.361,
598 744.367, 744.369, 744.3715, and 744.464, Florida Statutes, apply
599 to all proceedings pending on July 1, 2015.

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

601
602 ===== T I T L E A M E N D M E N T =====

603 And the title is amended as follows:

604 Delete everything before the enacting clause
605 and insert:

606 A bill to be entitled
607 An act relating to guardianship proceedings; amending
608 s. 709.2109, F.S.; requiring the filing of a motion
609 before termination or suspension of a power of
610 attorney in proceedings to determine a principal's
611 incapacity or for appointment of a guardian advocate
612 under certain circumstances; amending ss. 744.107 and
613 744.1075, F.S.; authorizing a court to appoint the
614 office of criminal conflict and civil regional counsel
615 as a court monitor in guardianship proceedings;
616 amending s. 744.108, F.S.; providing that fees and
617 costs incurred by an attorney who has rendered
618 services to a ward in compensation proceedings are
619 payable from guardianship assets; providing that



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620 expert testimony is not required in proceedings to
621 determine compensation for an attorney or guardian;
622 requiring a person offering expert testimony to
623 provide notice to interested persons; providing that
624 reasonable expert witness fees are recoverable;
625 amending s. 744.3025, F.S.; providing that a court may
626 appoint a guardian ad litem to represent a minor if
627 necessary to protect the minor's interest in a
628 settlement; providing that a settlement of a minor's
629 claim is subject to certain confidentiality
630 provisions; amending s. 744.3031, F.S.; requiring
631 notification of an alleged incapacitated person and
632 such person's attorney of a petition for appointment
633 of an emergency temporary guardian before a hearing on
634 the petition commences; prohibiting the final payment
635 of the emergency temporary guardian fees and his or
636 her attorney fees until the final report is filed;
637 amending s. 744.309, F.S.; providing that certain for-
638 profit corporations may act as guardian of a person;
639 providing conditions; requiring the posting and
640 maintenance of a fiduciary bond; limiting liability;
641 requiring the corporation to maintain certain
642 insurance coverage; providing for certain
643 grandfathered guardianships; amending s. 744.3115,
644 F.S.; directing the court to specify authority for
645 health care decisions with respect to a ward's advance
646 directive; amending s. 744.312, F.S.; requiring a
647 court to consider the wishes of the ward's relatives
648 when appointing a guardian; prohibiting a court from



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649 giving preference to the appointment of certain
650 persons as guardians; providing requirements for the
651 appointment of professional guardians; amending s.
652 744.3203, F.S.; providing grounds for filing a motion
653 for suspension of a power of attorney before
654 determination of incapacity; providing criteria for
655 such motion; requiring a hearing under certain
656 conditions; providing for the award of attorney fees
657 and costs; amending s. 744.331, F.S.; directing the
658 court to consider certain factors when determining
659 incapacity; requiring that the examining committee be
660 paid from state funds as court-appointed expert
661 witnesses if a petition for incapacity is dismissed;
662 requiring that a petitioner reimburse the state for
663 such expert witness fees if the court finds the
664 petition to have been filed in bad faith; amending s.
665 744.344, F.S.; providing conditions under which the
666 court is authorized to appoint an emergency temporary
667 guardian; amending s. 744.345, F.S.; revising
668 provisions relating to letters of guardianship;
669 creating s. 744.359, F.S.; prohibiting abuse, neglect,
670 or exploitation of a ward by a guardian; requiring
671 reporting thereof to the Department of Children and
672 Families central abuse hotline; providing for
673 interpretation; amending s. 744.361, F.S.; providing
674 additional powers and duties of a guardian; amending
675 s. 744.367, F.S.; revising the period during which a
676 guardian must file an annual guardianship plan with
677 the court; amending s. 744.369, F.S.; providing for



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678 the continuance of a guardian's authority to act under
679 an expired annual report under certain circumstances;
680 amending s. 744.3715, F.S.; providing that an
681 interested party may petition the court regarding a
682 guardian's failure to comply with the duties of a
683 guardian; amending s. 744.464, F.S.; establishing the
684 burden of proof for determining restoration of
685 capacity of a ward in pending guardianship cases;
686 requiring a court to advance such cases on the
687 calendar; providing applicability; providing an
688 effective date.