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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to guardianship proceedings; amending s. 709.2109, F.S.; requiring the filing of a motion before termination or suspension of a power of attorney in proceedings to determine a principal's incapacity or for appointment of a guardian advocate under certain circumstances; amending ss. 744.107 and 744.1075, F.S.; authorizing a court to appoint the office of criminal conflict and civil regional counsel as a court monitor in guardianship proceedings; amending s. 744.108, F.S.; providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; providing that expert testimony is not required in proceedings to determine compensation for an attorney or guardian; requiring a person offering expert testimony to provide notice to interested persons; providing that reasonable expert witness fees are recoverable; amending s. 744.3025, F.S.; providing that a court may appoint a guardian ad litem to represent a minor if necessary to protect the minor's interest in a settlement; providing that a settlement of a minor's claim is subject to certain confidentiality provisions; amending s. 744.3031, F.S.; requiring notification of an alleged incapacitated person and such person's attorney of a petition for appointment



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28 of an emergency temporary guardian before a hearing on
29 the petition commences; prohibiting the final payment
30 of the emergency temporary guardian fees and his or
31 her attorney fees until the final report is filed;
32 amending s. 744.309, F.S.; providing that certain for-
33 profit corporations may act as guardian of a person;
34 providing conditions; requiring the posting and
35 maintenance of a fiduciary bond; limiting liability;
36 requiring the corporation to maintain certain
37 insurance coverage; providing for certain
38 grandfathered guardianships; amending s. 744.3115,
39 F.S.; directing the court to specify authority for
40 health care decisions with respect to a ward's advance
41 directive; amending s. 744.312, F.S.; requiring a
42 court to consider the wishes of the ward's relatives
43 when appointing a guardian; prohibiting a court from
44 giving preference to the appointment of certain
45 persons as guardians; providing requirements for the
46 appointment of professional guardians; amending s.
47 744.3203, F.S.; providing grounds for filing a motion
48 for suspension of a power of attorney before
49 determination of incapacity; providing criteria for
50 such motion; requiring a hearing under certain
51 conditions; providing for the award of attorney fees
52 and costs; amending s. 744.331, F.S.; directing the
53 court to consider certain factors when determining
54 incapacity; requiring that the examining committee be
55 paid from state funds as court-appointed expert
56 witnesses if a petition for incapacity is dismissed;



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57 requiring that a petitioner reimburse the state for
58 such expert witness fees if the court finds the
59 petition to have been filed in bad faith; amending s.
60 744.344, F.S.; providing conditions under which the
61 court is authorized to appoint an emergency temporary
62 guardian; amending s. 744.345, F.S.; revising
63 provisions relating to letters of guardianship;
64 creating s. 744.359, F.S.; prohibiting abuse, neglect,
65 or exploitation of a ward by a guardian; requiring
66 reporting thereof to the Department of Children and
67 Families central abuse hotline; providing for
68 interpretation; amending s. 744.361, F.S.; providing
69 additional powers and duties of a guardian; amending
70 s. 744.367, F.S.; revising the period during which a
71 guardian must file an annual guardianship plan with
72 the court; amending s. 744.369, F.S.; providing for
73 the continuance of a guardian's authority to act under
74 an expired annual report under certain circumstances;
75 amending s. 744.3715, F.S.; providing that an
76 interested party may petition the court regarding a
77 guardian's failure to comply with the duties of a
78 guardian; amending s. 744.464, F.S.; establishing the
79 burden of proof for determining restoration of
80 capacity of a ward in pending guardianship cases;
81 requiring a court to advance such cases on the
82 calendar; providing applicability; providing an
83 effective date.

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85 Be It Enacted by the Legislature of the State of Florida:



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

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

(b) Notwithstanding the provisions of this section, unless otherwise ordered by the court, a proceeding to determine incapacity does not affect the authority of the agent to make health care decisions for the principal, including, but not limited to, those provided in chapter 765. If the principal has executed a health care advance directive designating a health care surrogate, the terms of the directive control if the



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115 directive and the power of attorney are in conflict unless the
116 power of attorney is later executed and expressly states
117 otherwise.

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

120 744.107 Court monitors.—

121 (5) The court may appoint the office of criminal conflict
122 and civil regional counsel as monitor if the ward is indigent.

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

125 744.1075 Emergency court monitor.—

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

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

131 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
132 and expenses.—

133 (5) All petitions for guardian ~~guardian's~~ and attorney
134 ~~attorney's~~ fees and expenses must be accompanied by an itemized
135 description of the services performed for the fees and expenses
136 sought to be recovered.

137 (8) When court proceedings are instituted to review or
138 determine a guardian's or an attorney's fees under subsection
139 (2), such proceedings are part of the guardianship
140 administration process and the costs, including costs and
141 attorney fees for the guardian's attorney, an attorney appointed
142 under s. 744.331(2), or an attorney who has rendered services to
143 the ward, shall be determined by the court and paid from the



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144 assets of the guardianship estate unless the court finds the
145 requested compensation under subsection (2) to be substantially
146 unreasonable.

147 (9) The court may determine that a request for compensation
148 by the guardian, the guardian's attorney, a person employed by
149 the guardian, an attorney appointed under s. 744.331(2), or an
150 attorney who has rendered services to the ward, is reasonable
151 without receiving expert testimony. A person or party may offer
152 expert testimony for or against a request for compensation after
153 giving notice to interested persons. Reasonable expert witness
154 fees shall be awarded by the court and paid from the assets of
155 the guardianship estate using the standards in subsection (8).

156 Section 5. Section 744.3025, Florida Statutes, is amended
157 to read:

158 744.3025 Claims of minors.—

159 (1) (a) The court may appoint a guardian ad litem to
160 represent the minor's interest before approving a settlement of
161 the minor's portion of the claim in a ~~any~~ case in which a minor
162 has a claim for personal injury, property damage, wrongful
163 death, or other cause of action in which the gross settlement of
164 the claim exceeds \$15,000 if the court believes a guardian ad
165 litem is necessary to protect the minor's interest.

166 (b) Except as provided in paragraph (e), the court shall
167 appoint a guardian ad litem to represent the minor's interest
168 before approving a settlement of the minor's claim in a ~~any~~ case
169 in which the gross settlement involving a minor equals or
170 exceeds \$50,000.

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



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

175 (e) A court need not appoint a guardian ad litem for the
176 minor if a guardian of the minor has previously been appointed
177 and that guardian has no potential adverse interest to the
178 minor. ~~A court may appoint a guardian ad litem if the court
179 believes a guardian ad litem is necessary to protect the
180 interests of the minor.~~

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

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

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

190 744.3031 Emergency temporary guardianship.-

191 (2) Notice of filing of the petition for appointment of an
192 emergency temporary guardian and a hearing on the petition must
193 be served on the alleged incapacitated person and on the alleged
194 incapacitated person's attorney at least 24 hours before the
195 hearing on the petition is commenced, unless the petitioner
196 demonstrates that substantial harm to the alleged incapacitated
197 person would occur if the 24-hour notice is given.

198 (9)-(8)(a) An emergency temporary guardian shall file a
199 final report no later than 30 days after the expiration of the
200 emergency temporary guardianship.

201 (b) A court may not authorize any final payment of the



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202 emergency temporary guardian fees or the fees of his or her
203 attorney until the final report is filed.

204 (c)~~(b)~~ If an emergency temporary guardian is a guardian for
205 the property, the final report must consist of a verified
206 inventory of the property, as provided in s. 744.365, as of the
207 date the letters of emergency temporary guardianship were
208 issued, a final accounting that gives a full and correct account
209 of the receipts and disbursements of all the property of the
210 ward over which the guardian had control, and a statement of the
211 property of the ward on hand at the end of the emergency
212 temporary guardianship. If the emergency temporary guardian
213 becomes the successor guardian of the property, the final report
214 must satisfy the requirements of the initial guardianship report
215 for the guardian of the property as provided in s. 744.362.

216 (d)~~(e)~~ If the emergency temporary guardian is a guardian of
217 the person, the final report must summarize the activities of
218 the temporary guardian with regard to residential placement,
219 medical condition, mental health and rehabilitative services,
220 and the social condition of the ward to the extent of the
221 authority granted to the temporary guardian in the letters of
222 guardianship. If the emergency temporary guardian becomes the
223 successor guardian of the person, the report must satisfy the
224 requirements of the initial report for a guardian of the person
225 as stated in s. 744.362.

226 (e)~~(d)~~ A copy of the final report of the emergency
227 temporary guardianship shall be served on the successor guardian
228 and the ward.

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



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231 744.309 Who may be appointed guardian of a resident ward.-

232 (7) FOR-PROFIT CORPORATE GUARDIAN.-A for-profit corporate
233 guardian existing under the laws of this state is qualified to
234 act as guardian of a ward if the entity is qualified to do
235 business in the state, is wholly owned by the person who is the
236 circuit's public guardian in the circuit where the corporate
237 guardian is appointed, has met the registration requirements of
238 s. 744.1083, and posts and maintains a bond or insurance policy
239 under paragraph (a).

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

242 1. Post and maintain a blanket fiduciary bond of at least
243 \$250,000 with the clerk of the circuit court in the county in
244 which the corporate guardian has its principal place of
245 business. The corporate guardian shall provide proof of the
246 fiduciary bond to the clerks of each additional circuit court in
247 which he or she is serving as a guardian. The bond must cover
248 all wards for whom the corporation has been appointed as a
249 guardian at any given time. The liability of the provider of the
250 bond is limited to the face value of the bond, regardless of the
251 number of wards for whom the corporation is acting as a
252 guardian. The terms of the bond must cover the acts or omissions
253 of each agent or employee of the corporation who has direct
254 contact with the ward or access to the assets of the
255 guardianship. The bond must be payable to the Governor and his
256 or her successors in office and be conditioned on the faithful
257 performance of all duties of a guardian under this chapter. The
258 bond is in lieu of and not in addition to the bond required
259 under s. 744.1085 but is in addition to any bonds required under



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260 s. 744.351. The expenses incurred to satisfy the bonding
261 requirements of this section may not be paid with the assets of
262 any ward; or

263 2. Maintain a liability insurance policy that covers any
264 losses sustained by the guardianship caused by errors,
265 omissions, or any intentional misconduct committed by the
266 corporation's officers or agents. The policy must cover all
267 wards for whom the corporation is acting as a guardian for
268 losses up to \$250,000. The terms of the policy must cover acts
269 or omissions of each agent or employee of the corporation who
270 has direct contact with the ward or access to the assets of the
271 guardianship. The corporate guardian shall provide proof of the
272 fiduciary bond to the clerk of each circuit court in which he or
273 she is serving as a guardian.

274 (b) A for-profit corporation appointed as guardian before
275 July 1, 2015, is also qualified to serve as a guardian in the
276 particular guardianships in which the corporation has already
277 been appointed as guardian.

278 Section 8. Section 744.3115, Florida Statutes, is amended
279 to read:

280 744.3115 Advance directives for health care.—In each
281 proceeding in which a guardian is appointed under this chapter,
282 the court shall determine whether the ward, prior to incapacity,
283 has executed any valid advance directive under chapter 765. If
284 any advance directive exists, the court shall specify in its
285 order and letters of guardianship what authority, if any, the
286 guardian shall exercise over the ward with regard to health care
287 decisions and what authority, if any, the surrogate shall
288 continue to exercise over the ward with regard to health care



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289 decisions surrogate. Pursuant to the grounds listed in s.
290 765.105, the court, upon its own motion, may, with notice to the
291 surrogate and any other appropriate parties, modify or revoke
292 the authority of the surrogate to make health care decisions for
293 the ward. Any order revoking or modifying the authority of the
294 surrogate must be supported by specific written findings of
295 fact. If the court order provides that the guardian is
296 responsible for making health care decisions for the ward, the
297 guardian shall assume the responsibilities of the surrogate
298 which are provided in s. 765.205. For purposes of this section,
299 the term "health care decision" has the same meaning as in s.
300 765.101.

301 Section 9. Section 744.312, Florida Statutes, is reordered
302 and amended to read:

303 744.312 Considerations in appointment of guardian.—

304 (2)(1) If a guardian cannot be appointed under subsection
305 (1) subject to the provisions of subsection (4), the court may
306 appoint any person who is fit and proper and qualified to act as
307 guardian, whether related to the ward or not.

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

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

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

313 (c) Has the capacity to manage the financial resources
314 involved; or

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

317 (3) The court shall also:



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

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

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

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

326 (1)~~(4)~~ If the person designated is qualified to serve
327 pursuant to s. 744.309, the court shall appoint any standby
328 guardian or preneed guardian, unless the court determines that
329 appointing such person is contrary to the best interests of the
330 ward.

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

333 (a) In each case when a court appoints a professional
334 guardian and does not use a rotation system for such
335 appointment, the court must make specific findings of fact
336 stating why the person was selected as guardian in the
337 particular matter involved. The findings must reference each of
338 the factors listed in subsections (2) and (3).

339 (b) An emergency temporary guardian who is a professional
340 guardian may not be appointed as the permanent guardian of a
341 ward unless one of the next of kin of the alleged incapacitated
342 person or the ward requests that the professional guardian be
343 appointed as permanent guardian. The court may waive the
344 limitations of this paragraph if the special requirements of the
345 guardianship demand that the court appoint a guardian because he
346 or she has special talent or specific prior experience. The



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347 court must make specific findings of fact that justify waiving
348 the limitations of this paragraph.

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

353 Section 10. Section 744.3203, Florida Statutes, is created
354 to read:

355 744.3203 Suspension of power of attorney before incapacity
356 determination.—

357 (1) At any time during proceedings to determine incapacity
358 but before the entry of an order determining incapacity, the
359 authority granted under an alleged incapacitated person's power
360 of attorney to a parent, spouse, child, or grandchild is
361 suspended when the petitioner files a motion stating that a
362 specific power of attorney should be suspended for any of the
363 following grounds:

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

366 (b) The power of attorney is invalid.

367 (c) The agent has failed to discharge his or her duties or
368 incapacity or illness renders the agent incapable of discharging
369 duties.

370 (d) The agent has abused powers.

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

374
375 Grounds for suspending a power of attorney do not include the



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376 existence of a dispute between the agent and the petitioner
377 which is more appropriate for resolution in some other forum or
378 a legal proceeding other than a guardianship proceeding.

379 (2) The motion must:

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

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

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

387 (3) Upon the filing of a response to the motion by the
388 agent under the power of attorney, the court shall schedule the
389 motion for an expedited hearing. Unless an emergency arises and
390 the agent's response sets forth the nature of the emergency, the
391 property or matter involved, and the power to be exercised by
392 the agent, notice must be given to all interested persons, the
393 alleged incapacitated person, and the alleged incapacitated
394 person's attorney. The court order following the hearing must
395 set forth what powers the agent is permitted to exercise, if
396 any, pending the outcome of the petition to determine
397 incapacity.

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

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



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

407 744.331 Procedures to determine incapacity.—

408 (6) ORDER DETERMINING INCAPACITY.—If, after making findings
409 of fact on the basis of clear and convincing evidence, the court
410 finds that a person is incapacitated with respect to the
411 exercise of a particular right, or all rights, the court shall
412 enter a written order determining such incapacity. In
413 determining incapacity, the court shall consider the person's
414 unique needs and abilities and may only remove those rights that
415 the court finds the person does not have the capacity to
416 exercise. A person is determined to be incapacitated only with
417 respect to those rights specified in the order.

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

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

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

424 3. The specific legal disabilities to which the person is
425 subject; and

426 4. The specific rights that the person is incapable of
427 exercising.

428 (b) When an order determines that a person is incapable of
429 exercising delegable rights, the court must consider and find
430 whether there is an alternative to guardianship that will
431 sufficiently address the problems of the incapacitated person. ~~A~~
432 ~~guardian must be appointed to exercise the incapacitated~~
433 ~~person's delegable rights unless the court finds there is an~~



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434 ~~alternative.~~ A guardian may not be appointed if the court finds
435 there is an alternative to guardianship which will sufficiently
436 address the problems of the incapacitated person. If the court
437 finds there is not an alternative to guardianship that
438 sufficiently addresses the problems of the incapacitated person,
439 a guardian must be appointed to exercise the incapacitated
440 person's delegable rights.

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

445 (d) An order adjudicating a person to be incapacitated
446 constitutes proof of such incapacity until further order of the
447 court.

448 (e) After the order determining that the person is
449 incapacitated has been filed with the clerk, it must be served
450 on the incapacitated person. The person is deemed incapacitated
451 only to the extent of the findings of the court. The filing of
452 the order is notice of the incapacity. An incapacitated person
453 retains all rights not specifically removed by the court.

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

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

459 2. A reasonable factual basis for that belief,

460
461 the trust, trust amendment, or durable power of attorney shall
462 not be deemed to be an alternative to the appointment of a



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463 guardian. The appointment of a guardian does not limit the
464 court's power to determine that certain authority granted by a
465 durable power of attorney is to remain exercisable by the agent
466 ~~attorney in fact.~~

467 (7) FEES.—

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

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

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

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

478 744.344 Order of appointment.—

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

484 Section 13. Section 744.345, Florida Statutes, is amended
485 to read:

486 744.345 Letters of guardianship.—Letters of guardianship
487 shall be issued to the guardian and shall specify whether the
488 guardianship pertains to the person, or the property, or both,
489 of the ward. The letters must state whether the guardianship is
490 plenary or limited, and, if limited, the letters must state the
491 powers and duties of the guardian. ~~If the guardianship is~~



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492 ~~limited,~~ The letters shall state whether or not and to what
493 extent the guardian is authorized to act on behalf of the ward
494 with regard to any advance directive previously executed by the
495 ward.

496 Section 14. Section 744.359, Florida Statutes, is created
497 to read:

498 744.359 Abuse, neglect, or exploitation by a guardian.-

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

500 (2) A guardian has committed exploitation when the
501 guardian:

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

503 (b) Abuses his or her powers; or

504 (c) Wastes, embezzles, or intentionally mismanages the
505 assets of the ward.

506 (3) A person who believes that a guardian is abusing,
507 neglecting, or exploiting a ward shall report the incident to
508 the central abuse hotline of the Department of Children and
509 Families.

510 (4) This section shall be interpreted in conformity with s.
511 825.103.

512 Section 15. Section 744.361, Florida Statutes, is amended
513 to read:

514 744.361 Powers and duties of guardian.-

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

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



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- 521 (3) The guardian shall act in good faith.
- 522 (4) A guardian may not act in a manner that is contrary to
523 the ward's best interests under the circumstances.
- 524 (5) A guardian who has special skills or expertise, or is
525 appointed in reliance upon the guardian's representation that
526 the guardian has special skills or expertise, shall use those
527 special skills or expertise when acting on behalf of the ward.
- 528 ~~(6)~~~~(2)~~ The guardian shall file an initial guardianship
529 report in accordance with s. 744.362.
- 530 ~~(7)~~~~(3)~~ The guardian shall file a guardianship report
531 annually in accordance with s. 744.367.
- 532 ~~(8)~~~~(4)~~ The guardian of the person shall implement the
533 guardianship plan.
- 534 ~~(9)~~~~(5)~~ When two or more guardians have been appointed, the
535 guardians shall consult with each other.
- 536 ~~(10)~~~~(6)~~ A guardian who is given authority over any property
537 of the ward shall:
- 538 (a) Protect and preserve the property and invest it
539 prudently as provided in chapter 518, apply it as provided in s.
540 744.397, and keep clear, distinct, and accurate records of the
541 administration of the ward's property ~~account for it faithfully.~~
- 542 (b) Perform all other duties required of him or her by law.
- 543 (c) At the termination of the guardianship, deliver the
544 property of the ward to the person lawfully entitled to it.
- 545 ~~(11)~~~~(7)~~ The guardian shall observe the standards in dealing
546 with the guardianship property that would be observed by a
547 prudent person dealing with the property of another, ~~and, if the~~
548 ~~guardian has special skills or is named guardian on the basis of~~
549 ~~representations of special skills or expertise, he or she is~~



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550 ~~under a duty to use those skills.~~

551 (12)~~(8)~~ The guardian, if authorized by the court, shall
552 take possession of all of the ward's property and of the rents,
553 income, issues, and profits from it, whether accruing before or
554 after the guardian's appointment, and of the proceeds arising
555 from the sale, lease, or mortgage of the property or of any
556 part. All of the property and the rents, income, issues, and
557 profits from it are assets in the hands of the guardian for the
558 payment of debts, taxes, claims, charges, and expenses of the
559 guardianship and for the care, support, maintenance, and
560 education of the ward or the ward's dependents, as provided for
561 under the terms of the guardianship plan or by law.

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

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

567 (b) Allow the ward to maintain contact with family and
568 friends unless the guardian believes that such contact may cause
569 harm to the ward.

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

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

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

578 (f) To the extent applicable, make provision for the



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579 medical, mental, rehabilitative, or personal care services for
580 the welfare of the ward.

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

584 (h) Evaluate the ward's medical and health care options,
585 financial resources, and desires when making residential
586 decisions that are best suited for the current needs of the
587 ward.

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

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

595 (14)-(9) A professional guardian must ensure that each of
596 the guardian's wards is personally visited by the guardian or
597 one of the guardian's professional staff at least once each
598 calendar quarter. During the personal visit, the guardian or the
599 guardian's professional staff person shall assess:

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

601 (b) The appropriateness of the ward's current living
602 situation.

603 (c) The need for any additional services and the necessity
604 for continuation of existing services, taking into consideration
605 all aspects of social, psychological, educational, direct
606 service, health, and personal care needs.

607 (d) The nature and extent of visitation and communication



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608 with the ward's family and friends.

609

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

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

614 744.367 Duty to file annual guardianship report.—

615 (1) Unless the court requires filing on a calendar-year
616 basis, each guardian of the person shall file with the court an
617 annual guardianship plan at least 60 days, but no more than
618 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary
619 month that the letters of guardianship were signed, and the plan
620 must cover the coming fiscal year, ending on the last day in
621 such anniversary month. If the court requires calendar-year
622 filing, the guardianship plan for the forthcoming calendar year
623 must be filed on or after September 1 but no later than December
624 1 of the current year ~~before April 1 of each year.~~

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

627 744.369 Judicial review of guardianship reports.—

628 (8) The approved report constitutes the authority for the
629 guardian to act in the forthcoming year. The powers of the
630 guardian are limited by the terms of the report. The annual
631 report may not grant additional authority to the guardian
632 without a hearing, as provided for in s. 744.331, to determine
633 that the ward is incapacitated to act in that matter. Unless the
634 court orders otherwise, the guardian may continue to act under
635 authority of the last-approved report until the forthcoming
636 year's report is approved.



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

639 744.3715 Petition for interim judicial review.—

640 (1) At any time, any interested person, including the ward,
641 may petition the court for review alleging that the guardian is
642 not complying with the guardianship plan, ~~or~~ is exceeding his or
643 her authority under the guardianship plan, is acting in a manner
644 contrary to s. 744.361, is denying visitation between the ward
645 and his or her relatives in violation of s. 744.361(13), or ~~and~~
646 ~~the guardian~~ is not acting in the best interest of the ward. The
647 petition for review must state the nature of the objection to
648 the guardian's action or proposed action. Upon the filing of any
649 such petition, the court shall review the petition and act upon
650 it expeditiously.

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

654 744.464 Restoration to capacity.—

655 (3) ORDER OF RESTORATION.—

656 (a) If no objections are filed, and the court is satisfied
657 that with the medical examination establishes by a preponderance
658 of the evidence that restoration of all or some of the ward's
659 rights is appropriate, the court shall enter an order of
660 restoration of capacity, restoring all or some of the rights
661 which were removed from the ward in accordance with those
662 findings. ~~The order must be issued within 30 days after the~~
663 ~~medical report is filed.~~

664 (b) At the conclusion of a hearing, conducted pursuant to
665 s. 744.1095, the court shall make specific findings of fact and,



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666 based on a preponderance of the evidence, enter an order either
667 denying the suggestion of capacity or restoring all or some of
668 the rights which were removed from the ward. The ward has the
669 burden of proving by a preponderance of the evidence that the
670 restoration of capacity is warranted.

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

674 Section 20. Sections 709.2109 and 744.3203, Florida
675 Statutes, as created by this act, apply to all proceedings filed
676 on or after July 1, 2015. The amendments made by this act to ss.
677 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,
678 744.3115, 744.312, 744.331, 744.344, 744.345, 744.359, 744.361,
679 744.367, 744.369, 744.3715, and 744.464, Florida Statutes, apply
680 to all proceedings pending on July 1, 2015.

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