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CS/CS/HB 437, Engrossed 1

2015 Legislature

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2 An act relating to guardians for dependent children
3 who are developmentally disabled or incapacitated;
4 providing a short title; amending s. 39.6251, F.S.;
5 requiring the continued review of the necessity of
6 guardianships for young adults; amending s. 39.701,
7 F.S.; requiring an updated case plan developed in a
8 face-to-face conference with the child, if
9 appropriate, and other specified persons; providing
10 requirements for the Department of Children and
11 Families when a court determines that there is a good
12 faith basis to appoint a guardian advocate, limited
13 guardian, or plenary guardian for the child and that
14 no less restrictive decisionmaking assistance will
15 meet the child's needs; requiring the department to
16 provide specified information if another interested
17 party or participant initiates proceedings for the
18 appointment of a guardian advocate, plenary guardian,
19 or limited guardian for the child; requiring that
20 proceedings seeking appointment of a guardian advocate
21 or a determination of incapacity and the appointment
22 of a guardian be conducted in a separate proceeding in
23 guardianship court; amending s. 393.12, F.S.;
24 providing that the guardianship court has jurisdiction
25 over proceedings for appointment of a guardian
26 advocate if petitions are filed for certain minors who



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27 | are subject to chapter 39, F.S., proceedings if such
28 | minors have attained a specified age; providing that
29 | such minor has the same due process rights as certain
30 | adults; providing requirements for when an order
31 | appointing a guardian advocate must be issued;
32 | providing that proceedings seeking appointment of a
33 | guardian advocate for certain minors be conducted
34 | separately from any other proceeding; amending s.
35 | 744.301, F.S.; providing that if a child is subject to
36 | proceedings under chapter 39, F.S., the parents may
37 | act as natural guardians unless the court finds that
38 | it is not in the child's best interests or their
39 | parental rights have been terminated; amending s.
40 | 744.3021, F.S.; requiring the guardianship court to
41 | initiate proceedings for appointment of guardians for
42 | certain minors who are subject to chapter 39, F.S.,
43 | proceedings if petitions are filed and if such minors
44 | have reached a specified age; providing that such
45 | minor has the same due process rights as certain
46 | adults; providing requirements for when an order of
47 | adjudication and letters of limited or plenary
48 | guardianship must be issued; providing that
49 | proceedings seeking appointment of a guardian advocate
50 | for certain minors be conducted separately from any
51 | other proceeding; providing an effective date.

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

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55 Section 1. This act may be cited as "The Regis Little Act
56 to Protect Children with Special Needs."

57 Section 2. Subsection (8) of section 39.6251, Florida
58 Statutes, is amended to read:

59 39.6251 Continuing care for young adults.—

60 (8) During the time that a young adult is in care, the
61 court shall maintain jurisdiction to ensure that the department
62 and the lead agencies are providing services and coordinate
63 with, and maintain oversight of, other agencies involved in
64 implementing the young adult's case plan, individual education
65 plan, and transition plan. The court shall review the status of
66 the young adult at least every 6 months and hold a permanency
67 review hearing at least annually. If the young adult is
68 appointed a guardian under chapter 744 or a guardian advocate
69 under s. 393.12, at the permanency review hearing the court
70 shall review the necessity of continuing the guardianship and
71 whether restoration of guardianship proceedings are needed when
72 the young adult reaches 22 years of age. The court may appoint a
73 guardian ad litem or continue the appointment of a guardian ad
74 litem with the young adult's consent. The young adult or any
75 other party to the dependency case may request an additional
76 hearing or review.

77 Section 3. Paragraphs (b) and (c) of subsection (3) of
78 section 39.701, Florida Statutes, are amended to read:



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79 39.701 Judicial review.—

80 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

81 (b) At the first judicial review hearing held subsequent
 82 to the child's 17th birthday, the department shall provide the
 83 court with an updated case plan that includes specific
 84 information related to the independent living skills that the
 85 child has acquired since the child's 13th birthday, or since the
 86 date the child came into foster care, whichever came later.

87 1. For any child that may meet the requirements for
 88 appointment of a guardian pursuant to chapter 744, or a guardian
 89 advocate pursuant to s. 393.12, the updated case plan must be
 90 developed in a face-to-face conference with the child, if
 91 appropriate; the child's attorney; any court-appointed guardian
 92 ad litem; the temporary custodian of the child; and the parent,
 93 if the parent's rights have not been terminated.

94 2. At the judicial review hearing, if the court determines
 95 pursuant to chapter 744 that there is a good faith basis to
 96 believe that the child qualifies for appointment of a guardian
 97 advocate, limited guardian, or plenary guardian for the child
 98 and that no less restrictive decisionmaking assistance will meet
 99 the child's needs:

100 a. The department shall complete a multidisciplinary
 101 report which must include, but is not limited to, a psychosocial
 102 evaluation and educational report if such a report has not been
 103 completed within the previous 2 years.

104 b. The department shall identify one or more individuals



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105 who are willing to serve as the guardian advocate pursuant to s.
106 393.12 or as the plenary or limited guardian pursuant to chapter
107 744. Any other interested parties or participants may make
108 efforts to identify such a guardian advocate, limited guardian,
109 or plenary guardian. The child's biological or adoptive family
110 members, including the child's parents if the parents' rights
111 have not been terminated, may not be considered for service as
112 the plenary or limited guardian unless the court enters a
113 written order finding that such an appointment is in the child's
114 best interests.

115 c. Proceedings may be initiated within 180 days after the
116 child's 17th birthday for the appointment of a guardian
117 advocate, plenary guardian, or limited guardian for the child in
118 a separate proceeding in the court division with jurisdiction
119 over guardianship matters and pursuant to chapter 744. The
120 Legislature encourages the use of pro bono representation to
121 initiate proceedings under this section.

122 3. In the event another interested party or participant
123 initiates proceedings for the appointment of a guardian
124 advocate, plenary guardian, or limited guardian for the child,
125 the department shall provide all necessary documentation and
126 information to the petitioner to complete a petition under s.
127 393.12 or chapter 744 within 45 days after the first judicial
128 review hearing after the child's 17th birthday.

129 4. Any proceedings seeking appointment of a guardian
130 advocate or a determination of incapacity and the appointment of



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131 a guardian must be conducted in a separate proceeding in the
132 court division with jurisdiction over guardianship matters and
133 pursuant to chapter 744.

134 (c) If the court finds at the judicial review hearing that
135 the department has not met its obligations to the child as
136 stated in this part, in the written case plan, or in the
137 provision of independent living services, the court may issue an
138 order directing the department to show cause as to why it has
139 not done so. If the department cannot justify its noncompliance,
140 the court may give the department 30 days within which to
141 comply. If the department fails to comply within 30 days, the
142 court may hold the department in contempt.

143 Section 4. Paragraph (c) is added to subsection (2) of
144 section 393.12, Florida Statutes, to read:

145 393.12 Capacity; appointment of guardian advocate.—

146 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

147 (c) If a petition is filed pursuant to this section
148 requesting appointment of a guardian advocate for a minor who is
149 the subject of any proceeding under chapter 39, the court
150 division with jurisdiction over guardianship matters has
151 jurisdiction over the proceedings pursuant to this section when
152 the minor reaches the age of 17 years and 6 months or anytime
153 thereafter. The minor shall be provided all the due process
154 rights conferred upon an alleged developmentally disabled adult
155 pursuant to this chapter. The order of appointment of a guardian
156 advocate under this section shall issue upon the minor's 18th



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157 birthday or as soon thereafter as possible. Any proceeding
158 pursuant to this paragraph shall be conducted separately from
159 any other proceeding.

160 Section 5. Subsection (1) of section 744.301, Florida
161 Statutes, is amended to read:

162 744.301 Natural guardians.—

163 (1) The parents jointly are the natural guardians of their
164 own children and of their adopted children, during minority,
165 unless the parents' parental rights have been terminated
166 pursuant to chapter 39. If a child is the subject of any
167 proceeding under chapter 39, the parents may act as natural
168 guardians under this section unless the court division with
169 jurisdiction over guardianship matters finds that it is not in
170 the child's best interests. If one parent dies, the surviving
171 parent remains the sole natural guardian even if he or she
172 remarries. If the marriage between the parents is dissolved, the
173 natural guardianship belongs to the parent to whom sole parental
174 responsibility has been granted, or if the parents have been
175 granted shared parental responsibility, both continue as natural
176 guardians. If the marriage is dissolved and neither parent is
177 given parental responsibility for the child, neither may act as
178 natural guardian of the child. The mother of a child born out of
179 wedlock is the natural guardian of the child and is entitled to
180 primary residential care and custody of the child unless the
181 court enters an order stating otherwise.

182 Section 6. Subsection (1) of section 744.3021, Florida



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183 Statutes, is amended, and subsection (4) is added to that
184 section, to read:

185 744.3021 Guardians of minors.—

186 (1) Except as provided in subsection (4), upon petition of
187 a parent, brother, sister, next of kin, or other person
188 interested in the welfare of a minor, a guardian for a minor may
189 be appointed by the court without the necessity of adjudication
190 pursuant to s. 744.331. A guardian appointed for a minor,
191 whether of the person or property, has the authority of a
192 plenary guardian.

193 (4) If a petition is filed pursuant to this section
194 requesting appointment of a guardian for a minor who is the
195 subject of any proceeding under chapter 39 and who is aged 17
196 years and 6 months or older, the court division with
197 jurisdiction over guardianship matters has jurisdiction over the
198 proceedings under s. 744.331. The alleged incapacitated minor
199 under this subsection shall be provided all the due process
200 rights conferred upon an alleged incapacitated adult pursuant to
201 this chapter and applicable court rules. The order of
202 adjudication under s. 744.331 and the letters of limited or
203 plenary guardianship may issue upon the minor's 18th birthday or
204 as soon thereafter as possible. Any proceeding pursuant to this
205 subsection shall be conducted separately from any other
206 proceeding.

207 Section 7. This act shall take effect July 1, 2015.