

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Passidomo offered the following:

2

3 **Amendment (with title amendment)**

4 Remove lines 183-548 and insert:

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

10 744.3031 Emergency temporary guardianship.—

11 (2) Notice of filing of the petition for appointment of an
12 emergency temporary guardian and a hearing on the petition must
13 be served on the alleged incapacitated person and on the alleged
14 incapacitated person's attorney at least 24 hours before the

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15 hearing on the petition is commenced, unless the petitioner
16 demonstrates that substantial harm to the alleged incapacitated
17 person would occur if the 24-hour notice is given.

18 (9)-(8)(a) An emergency temporary guardian shall file a
19 final report no later than 30 days after the expiration of the
20 emergency temporary guardianship.

21 (b) A court may not authorize any payment of the emergency
22 temporary guardian's final fees or the final fees of his or her
23 attorney until the final report is filed.

24 (c)-(b) If an emergency temporary guardian is a guardian
25 for the property, the final report must consist of a verified
26 inventory of the property, as provided in s. 744.365, as of the
27 date the letters of emergency temporary guardianship were
28 issued, a final accounting that gives a full and correct account
29 of the receipts and disbursements of all the property of the
30 ward over which the guardian had control, and a statement of the
31 property of the ward on hand at the end of the emergency
32 temporary guardianship. If the emergency temporary guardian
33 becomes the successor guardian of the property, the final report
34 must satisfy the requirements of the initial guardianship report
35 for the guardian of the property as provided in s. 744.362.

36 (d)-(e) If the emergency temporary guardian is a guardian
37 of the person, the final report must summarize the activities of
38 the temporary guardian with regard to residential placement,
39 medical condition, mental health and rehabilitative services,
40 and the social condition of the ward to the extent of the

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41 authority granted to the temporary guardian in the letters of
42 guardianship. If the emergency temporary guardian becomes the
43 successor guardian of the person, the report must satisfy the
44 requirements of the initial report for a guardian of the person
45 as stated in s. 744.362.

46 (e)~~(d)~~ A copy of the final report of the emergency
47 temporary guardianship shall be served on the successor guardian
48 and the ward.

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

51 744.309 Who may be appointed guardian of a resident ward.—

52 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate
53 guardian existing under the laws of this state is qualified to
54 act as guardian of a ward if the entity is qualified to do
55 business in the state, is wholly owned by the person who is the
56 circuit's public guardian in the circuit where the corporate
57 guardian is appointed, has met the registration requirements of
58 s. 744.1083, and posts and maintains a bond or insurance policy
59 under paragraph (a).

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

62 1. Post and maintain a blanket fiduciary bond of at least
63 \$250,000 with the clerk of the circuit court in the county in
64 which the corporate guardian has its principal place of
65 business. The corporate guardian shall provide proof of the
66 fiduciary bond to the clerks of each additional circuit court in

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67 which he or she is serving as a guardian. The bond must cover
68 all wards for whom the corporation has been appointed as a
69 guardian at any given time. The liability of the provider of the
70 bond is limited to the face value of the bond, regardless of the
71 number of wards for whom the corporation is acting as a
72 guardian. The terms of the bond must cover the acts or omissions
73 of each agent or employee of the corporation who has direct
74 contact with the ward or access to the assets of the
75 guardianship. The bond must be payable to the Governor and his
76 or her successors in office and be conditioned on the faithful
77 performance of all duties of a guardian under this chapter. The
78 bond is in lieu of and not in addition to the bond required
79 under s. 744.1085 but is in addition to any bonds required under
80 s. 744.351. The expenses incurred to satisfy the bonding
81 requirements of this section may not be paid with the assets of
82 any ward; or

83 2. Maintain a liability insurance policy that covers any
84 losses sustained by the guardianship caused by errors,
85 omissions, or any intentional misconduct committed by the
86 corporation's officers or agents. The policy must cover all
87 wards for whom the corporation is acting as a guardian for
88 losses up to \$250,000. The terms of the policy must cover acts
89 or omissions of each agent or employee of the corporation who
90 has direct contact with the ward or access to the assets of the
91 guardianship. The corporate guardian shall provide proof of the

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92 policy to the clerk of each circuit court in which he or she is
93 serving as a guardian.

94 (b) A for-profit corporation appointed as guardian before
95 July 1, 2015, is also qualified to serve as a guardian in the
96 particular guardianships in which the corporation has already
97 been appointed as guardian.

98 Section 8. Section 744.3115, Florida Statutes, is amended
99 to read:

100 744.3115 Advance directives for health care.—In each
101 proceeding in which a guardian is appointed under this chapter,
102 the court shall determine whether the ward, prior to incapacity,
103 has executed any valid advance directive under chapter 765. If
104 any advance directive exists, the court shall specify in its
105 order and letters of guardianship what authority, if any, the
106 guardian shall exercise over the ward with regard to health care
107 decisions and what authority, if any, the surrogate shall
108 continue to exercise over the ward with regard to health care
109 decisions surrogate. Pursuant to the grounds listed in s.
110 765.105, the court, upon its own motion, may, with notice to the
111 surrogate and any other appropriate parties, modify or revoke
112 the authority of the surrogate to make health care decisions for
113 the ward. Any order revoking or modifying the authority of the
114 surrogate must be supported by specific written findings of
115 fact. If the court order provides that the guardian is
116 responsible for making health care decisions for the ward, the
117 guardian shall assume the responsibilities of the surrogate

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118 which are provided in s. 765.205. For purposes of this section,
119 the term "health care decision" has the same meaning as in s.
120 765.101.

121 Section 9. Section 744.312, Florida Statutes, is reordered
122 and amended to read:

123 744.312 Considerations in appointment of guardian.—

124 (2)(1) If a guardian cannot be appointed under subsection
125 (1) ~~Subject to the provisions of subsection (4),~~ the court may
126 appoint any person who is fit and proper and qualified to act as
127 guardian, whether related to the ward or not.

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

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

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

133 (c) Has the capacity to manage the financial resources
134 involved; or

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

137 (3) The court shall also:

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

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

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

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

146 (1)-(4) If the person designated is qualified to serve
147 pursuant to s. 744.309, the court shall appoint any standby
148 guardian or preneed guardian, unless the court determines that
149 appointing such person is contrary to the best interests of the
150 ward.

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

153 (a) In each case when a court appoints a professional
154 guardian and does not use a rotation system for such
155 appointment, the court must make specific findings of fact
156 stating why the person was selected as guardian in the
157 particular matter involved. The findings must reference each of
158 the factors listed in subsections (2) and (3).

159 (b) An emergency temporary guardian who is a professional
160 guardian may not be appointed as the permanent guardian of a
161 ward unless one of the next of kin of the alleged incapacitated
162 person or the ward requests that the professional guardian be
163 appointed as permanent guardian. The court may waive the
164 limitations of this paragraph if the special requirements of the
165 guardianship demand that the court appoint a guardian because he
166 or she has special talent or specific prior experience. The
167 court must make specific findings of fact that justify waiving
168 the limitations of this paragraph.

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

173 Section 10. Section 744.3203, Florida Statutes, is created
174 to read:

175 744.3203 Suspension of power of attorney before incapacity
176 determination.—

177 (1) At any time during proceedings to determine incapacity
178 but before the entry of an order determining incapacity, the
179 authority granted under an alleged incapacitated person's power
180 of attorney to a parent, spouse, child, or grandchild is
181 suspended when the petitioner files a motion stating that a
182 specific power of attorney should be suspended for any of the
183 following grounds:

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

186 (b) The power of attorney is invalid.

187 (c) The agent has failed to discharge his or her duties or
188 incapacity or illness renders the agent incapable of discharging
189 duties.

190 (d) The agent has abused powers.

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

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195 Grounds for suspending a power of attorney do not include the
196 existence of a dispute between the agent and the petitioner
197 which is more appropriate for resolution in some other forum or
198 a legal proceeding other than a guardianship proceeding.

199 (2) The motion must:

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

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

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

207 (3) Upon the filing of a response to the motion by the
208 agent under the power of attorney, the court shall schedule the
209 motion for an expedited hearing. Unless an emergency arises and
210 the agent's response sets forth the nature of the emergency, the
211 property or matter involved, and the power to be exercised by
212 the agent, notice must be given to all interested persons, the
213 alleged incapacitated person, and the alleged incapacitated
214 person's attorney. The court order following the hearing must
215 set forth what powers the agent is permitted to exercise, if
216 any, pending the outcome of the petition to determine
217 incapacity.

218 (4) In addition to any other remedy authorized by law, a
219 court may award reasonable attorney fees and costs to an agent

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220 who successfully challenges the suspension of the power of
221 attorney if the petitioner's motion was made in bad faith.

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

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

227 744.331 Procedures to determine incapacity.—

228 (6) ORDER DETERMINING INCAPACITY.—If, after making
229 findings of fact on the basis of clear and convincing evidence,
230 the court finds that a person is incapacitated with respect to
231 the exercise of a particular right, or all rights, the court
232 shall enter a written order determining such incapacity. In
233 determining incapacity, the court shall consider the person's
234 unique needs and abilities and may only remove those rights that
235 the court finds the person does not have the capacity to
236 exercise. A person is determined to be incapacitated only with
237 respect to those rights specified in the order.

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

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

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

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245 3. The specific legal disabilities to which the person is
246 subject; and

247 4. The specific rights that the person is incapable of
248 exercising.

249 (b) When an order determines that a person is incapable of
250 exercising delegable rights, the court must consider and find
251 whether there is an alternative to guardianship that will
252 sufficiently address the problems of the incapacitated person. ~~A~~
253 ~~guardian must be appointed to exercise the incapacitated~~
254 ~~person's delegable rights unless the court finds there is an~~
255 ~~alternative.~~ A guardian may not be appointed if the court finds
256 there is an alternative to guardianship which will sufficiently
257 address the problems of the incapacitated person. If the court
258 finds there is not an alternative to guardianship that
259 sufficiently addresses the problems of the incapacitated person,
260 a guardian must be appointed to exercise the incapacitated
261 person's delegable rights.

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

266 (d) An order adjudicating a person to be incapacitated
267 constitutes proof of such incapacity until further order of the
268 court.

269 (e) After the order determining that the person is
270 incapacitated has been filed with the clerk, it must be served

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271 on the incapacitated person. The person is deemed incapacitated
272 only to the extent of the findings of the court. The filing of
273 the order is notice of the incapacity. An incapacitated person
274 retains all rights not specifically removed by the court.

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

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

280 2. A reasonable factual basis for that belief,

281

282 the trust, trust amendment, or durable power of attorney shall
283 not be deemed to be an alternative to the appointment of a
284 guardian. The appointment of a guardian does not limit the
285 court's power to determine that certain authority granted by a
286 durable power of attorney is to remain exercisable by the agent
287 ~~attorney in fact.~~

288 (7) FEES.—

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

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

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

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

299 744.344 Order of appointment.—

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

305 Section 13. Section 744.345, Florida Statutes, is amended
306 to read:

307 744.345 Letters of guardianship.—Letters of guardianship
308 shall be issued to the guardian and shall specify whether the
309 guardianship pertains to the person, or the property, or both,
310 of the ward. The letters must state whether the guardianship is
311 plenary or limited, and, if limited, the letters must state the
312 powers and duties of the guardian. ~~If the guardianship is~~
313 ~~limited,~~ The letters shall state whether or not and to what
314 extent the guardian is authorized to act on behalf of the ward
315 with regard to any advance directive previously executed by the
316 ward.

317 Section 14. Section 744.359, Florida Statutes, is created
318 to read:

319 744.359 Abuse, neglect, or exploitation by a guardian.—

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

321 (2) A guardian has committed exploitation when the
322 guardian:

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

324 (b) Abuses his or her powers; or

325 (c) Wastes, embezzles, or intentionally mismanages the
326 assets of the ward.

327 (3) A person who believes that a guardian is abusing,
328 neglecting, or exploiting a ward shall report the incident to
329 the central abuse hotline of the Department of Children and
330 Families.

331 (4) This section shall be interpreted in conformity with
332 s. 825.103.

333 Section 15. Section 744.361, Florida Statutes, is amended
334 to read:

335 744.361 Powers and duties of guardian.—

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

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

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

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

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

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349 ~~(6)(2)~~ The guardian shall file an initial guardianship
350 report in accordance with s. 744.362.

351 ~~(7)(3)~~ The guardian shall file a guardianship report
352 annually in accordance with s. 744.367.

353 ~~(8)(4)~~ The guardian of the person shall implement the
354 guardianship plan.

355 ~~(9)(5)~~ When two or more guardians have been appointed, the
356 guardians shall consult with each other.

357 ~~(10)(6)~~ A guardian who is given authority over any
358 property of the ward shall:

359 (a) Protect and preserve the property and invest it
360 prudently as provided in chapter 518, apply it as provided in s.
361 744.397, and keep clear, distinct, and accurate records of the
362 administration of the ward's property ~~account for it faithfully.~~

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

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

367 ~~(11)(7)~~ The guardian shall observe the standards in
368 dealing with the guardianship property that would be observed by
369 a prudent person dealing with the property of another, ~~and, if~~
370 ~~the guardian has special skills or is named guardian on the~~
371 ~~basis of representations of special skills or expertise, he or~~
372 ~~she is under a duty to use those skills.~~

373 ~~(12)(8)~~ The guardian, if authorized by the court, shall
374 take possession of all of the ward's property and of the rents,

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375 income, issues, and profits from it, whether accruing before or
376 after the guardian's appointment, and of the proceeds arising
377 from the sale, lease, or mortgage of the property or of any
378 part. All of the property and the rents, income, issues, and
379 profits from it are assets in the hands of the guardian for the
380 payment of debts, taxes, claims, charges, and expenses of the
381 guardianship and for the care, support, maintenance, and
382 education of the ward or the ward's dependents, as provided for
383 under the terms of the guardianship plan or by law.

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

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

389 (b) Allow the ward to maintain contact with family and
390 friends unless the guardian believes that such contact may cause
391 harm to the ward.

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

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

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

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400 (f) To the extent applicable, make provision for the
401 medical, mental, rehabilitative, or personal care services for
402 the welfare of the ward.

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

406 (h) Evaluate the ward's medical and health care options,
407 financial resources, and desires when making residential
408 decisions that are best suited for the current needs of the
409 ward.

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

413 (j) When not inconsistent with the person's goals, needs,
414 and preferences, acquire an understanding of the available
415 residential options and give priority to home and other
416 community-based services and settings.

417
418 -----

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

419 Between lines 29 and 30, insert:
420
421 prohibiting the payment of the emergency temporary
422 guardian's final fees and his or her final attorney
423 fees until the final report is filed;

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