

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Passidomo offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Effective July 1, 2015, subsection (3) of
 7 section 709.2109, Florida Statutes, is amended to read:

8 709.2109 Termination or suspension of power of attorney or
 9 agent's authority.—

10 (3) If any person initiates judicial proceedings to
 11 determine the principal's incapacity or for the appointment of a
 12 guardian advocate, the authority granted under the power of
 13 attorney is suspended until the petition is dismissed or
 14 withdrawn or the court enters an order authorizing the agent to
 15 exercise one or more powers granted under the power of attorney.

16 However, if the agent named in the power of attorney is the
 17 principals parent, spouse, child or grandchild, the authority

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18 under the power of attorney is not suspended unless a verified
19 motion in accordance with s. 744.3203 is also filed.

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

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

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

39 744.107 Court monitors.—

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

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

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44 744.1075 Emergency court monitor.—

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

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

50 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
51 and expenses.—

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

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

66 (9) The court may determine that a request for
67 compensation by the guardian, the guardian's attorney, a person
68 employed by the guardian, an attorney appointed under s.
69 744.331(2), or an attorney who has rendered services to the

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

76 Section 5. Section 744.3025, Florida Statutes, is amended
77 to read:

78 744.3025 Claims of minors.—

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

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

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

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

95 (e) A court need not appoint a guardian ad litem for the

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96 minor if a guardian of the minor has previously been appointed
97 and that guardian has no potential adverse interest to the
98 minor. ~~A court may appoint a guardian ad litem if the court~~
99 ~~believes a guardian ad litem is necessary to protect the~~
100 ~~interests of the minor.~~

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

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

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

110 744.3031 Emergency temporary guardianship.—

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

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

120 744.309 Who may be appointed guardian of a resident ward.—

121 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate

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122 guardian existing under the laws of this state is qualified to
123 act as guardian of a ward if the entity is qualified to do
124 business in the state; is wholly owned by the person who is the
125 circuit's public guardian in the circuit where the corporate
126 guardian is appointed; and has met the registration requirements
127 of s. 744.1083, provided that the for-profit corporate guardian:
128 (a) Posts and maintains a blanket fiduciary bond of at
129 least \$250,000 with the clerk of the circuit court in the county
130 in which the corporate guardian has its principal place of
131 business. The corporate guardian shall provide proof of the
132 fiduciary bond to the clerks of each additional circuit court in
133 which he or she is serving as a guardian. The bond must cover
134 all wards for whom the corporation has been appointed as a
135 guardian at any given time. The liability of the provider of the
136 bond is limited to the face value of the bond, regardless of the
137 number of wards for whom the corporation is acting as a
138 guardian. The terms of the bond must cover the acts or omissions
139 of each agent or employee of the corporation who has direct
140 contact with the ward or access to the assets of the
141 guardianship. The bond must be payable to the Governor and his
142 or her successors in office and be conditioned on the faithful
143 performance of all duties of a guardian under this chapter. The
144 bond is in lieu of and not in addition to the bond required
145 under s. 744.1085 but is in addition any bonds required under s.
146 744.351. The expenses incurred to satisfy the bonding
147 requirements in this section may not be paid with the assets of

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148 any ward; or
149 (b) Maintains a liability insurance policy that covers any
150 losses sustained by the guardianship caused by errors,
151 omissions, or any intentional misconduct committed by the
152 corporation's officers or agents. The policy must cover all
153 wards for whom the corporation is acting as a guardian agent for
154 losses up to \$250,000. The terms of the policy must cover acts
155 or omissions of each agent or employee of the corporation who
156 has direct contact with the principal or access to the assets of
157 the guardianship. The corporate guardian shall provide proof of
158 the fiduciary bond to the clerks of each additional circuit
159 court in which he or she is serving as a guardian.
160 A for-profit corporation who has been appointed as guardian
161 prior to the effective date of this legislation is also
162 qualified to serve as guardian in the particular guardianships
163 in which the corporation has already been appointed as guardian.

164 Section 8. Section 744.3115, Florida Statutes, is amended
165 to read:

166 744.3115 Advance directives for health care.—In each
167 proceeding in which a guardian is appointed under this chapter,
168 the court shall determine whether the ward, prior to incapacity,
169 has executed any valid advance directive under chapter 765. If
170 any advance directive exists, the court shall specify in its
171 order and letters of guardianship what authority, if any, the
172 guardian shall exercise over the ward with regard to health care
173 decisions and what authority, if any, the surrogate shall

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174 continue to exercise over the ward with regard to health care
175 decisions surrogate. Pursuant to the grounds listed in s.
176 765.105, the court, upon its own motion, may, with notice to the
177 surrogate and any other appropriate parties, modify or revoke
178 the authority of the surrogate to make health care decisions for
179 the ward. For purposes of this section, the term "health care
180 decision" has the same meaning as in s. 765.101.

181 Section 9. Section 744.312, Florida Statutes, is reordered
182 and amended to read:

183 744.312 Considerations in appointment of guardian.—

184 (1)~~(4)~~ If the person designated is qualified to serve
185 pursuant to s. 744.309, the court shall appoint any standby
186 guardian or preneed guardian, unless the court determines that
187 appointing such person is contrary to the best interests of the
188 ward.

189 (2)~~(1)~~ If a guardian cannot be appointed under subsection
190 (1) ~~Subject to the provisions of subsection (4)~~, the court may
191 appoint any person who is fit and proper and qualified to act as
192 guardian, whether related to the ward or not.

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

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

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

198 (c) Has the capacity to manage the financial resources
199 involved; or

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

202 (3) The court shall also:

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

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

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

209 (d) Consider the wishes of next of kin of the ward, where
210 the ward cannot express a preference.

211 (4) Except where a standby guardian or a preneed guardian
212 is appointed by the court:

213 (a) If a professional guardian is appointed, a court that
214 does not utilize a rotation system for appointment of the
215 professional guardian in that particular matter involved must in
216 each guardianship case make specific findings of fact listing
217 why the particular person was selected by the court as guardian.
218 The order must reference each of the factors in subsections (2)
219 and (3).

220 (b) An emergency temporary guardian who is a professional
221 guardian may not be appointed as the permanent guardian of a
222 ward unless one of the next of kin of the alleged incapacitated
223 person or the ward requests that the professional guardian be
224 appointed as permanent guardian. The court may waive the
225 limitations of this paragraph if the special requirements of the

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226 guardianship demand that the court appoint a guardian because he
227 or she has special talent or specific prior experience. The
228 court must make specific findings of fact that justify a finding
229 that there are special requirements requiring an appointment
230 without reference to this limitation.

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

235 Section 10. Effective July 1, 2015, section 744.3203,
236 Florida Statutes, is created to read:

237 744.3203 Suspension of power of attorney before incapacity
238 determination.—

239 (1) At any time during proceedings to determine incapacity
240 but before the entry of an order determining incapacity, the
241 authority granted under an alleged incapacitated person's power
242 of attorney to a parent, spouse, child or grandchild is
243 suspended when the petitioner files a motion stating that a
244 specific power of attorney should be suspended for any of the
245 following grounds:

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

248 (b) The power of attorney is invalid.

249 (c) The agent has failed to discharge duties, or
250 incapacity or illness renders the agent incapable of discharging
251 duties.

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252 (d) The agent has abused powers.

253 (e) There is a danger the property of the alleged
254 incapacitated person may be wasted, misappropriated, or lost
255 unless the authority under the power of attorney is suspended.

256
257 Grounds for suspending a power of attorney do not include the
258 existence of a dispute between the agent and the petitioner
259 which is more appropriate for resolution in some other forum or
260 a legal proceeding other than a guardianship proceeding.

261 (2) The motion must:

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

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

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

269 (3) Upon the filing of a response to the motion by the
270 agent under the power of attorney, the court shall schedule the
271 motion for an expedited hearing. Unless an emergency has arisen
272 and the agent's response sets forth the nature of the emergency,
273 the property or matter involved, and the power to be exercised
274 by the agent, notice must be given to all interested persons,
275 the alleged incapacitated person, and the alleged incapacitated
276 person's attorney. The court order following the hearing must
277 set forth what powers the agent is permitted to exercise, if

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278 any, pending the outcome of the petition to determine
279 incapacity.

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

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

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

289 744.331 Procedures to determine incapacity.—

290 (6) ORDER DETERMINING INCAPACITY.—If, after making
291 findings of fact on the basis of clear and convincing evidence,
292 the court finds that a person is incapacitated with respect to
293 the exercise of a particular right, or all rights, the court
294 shall enter a written order determining such incapacity. In
295 determining incapacity, the court shall consider the person's
296 unique needs and abilities and may only remove those rights that
297 the court finds the person does not have the capacity to
298 exercise. A person is determined to be incapacitated only with
299 respect to those rights specified in the order.

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

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

303 2. The exact areas in which the person lacks capacity to

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304 make informed decisions about care and treatment services or to
305 meet the essential requirements for her or his physical or
306 mental health or safety;

307 3. The specific legal disabilities to which the person is
308 subject; and

309 4. The specific rights that the person is incapable of
310 exercising.

311 (b) When an order determines that a person is incapable of
312 exercising delegable rights, the court must consider and find
313 whether there is an alternative to guardianship that will
314 sufficiently address the problems of the incapacitated person. ~~A~~
315 ~~guardian must be appointed to exercise the incapacitated~~
316 ~~person's delegable rights unless the court finds there is an~~
317 ~~alternative.~~ A guardian may not be appointed if the court finds
318 there is an alternative to guardianship which will sufficiently
319 address the problems of the incapacitated person. If the court
320 finds there is not an alternative to guardianship that
321 sufficiently addresses the problems of the incapacitated person,
322 a guardian must be appointed to exercise the incapacitated
323 person's delegable rights.

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

328 (d) An order adjudicating a person to be incapacitated
329 constitutes proof of such incapacity until further order of the

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330 court.

331 (e) After the order determining that the person is
332 incapacitated has been filed with the clerk, it must be served
333 on the incapacitated person. The person is deemed incapacitated
334 only to the extent of the findings of the court. The filing of
335 the order is notice of the incapacity. An incapacitated person
336 retains all rights not specifically removed by the court.

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

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

342 2. A reasonable factual basis for that belief,

343

344 the trust, trust amendment, or durable power of attorney shall
345 not be deemed to be an alternative to the appointment of a
346 guardian. The appointment of a guardian does not limit the
347 court's power to determine that certain authority granted by a
348 durable power of attorney is to remain exercisable by the agent
349 ~~attorney in fact.~~

350 (7) FEES.—

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

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

354 2. Costs and attorney ~~attorney's~~ fees of the proceeding
355 may be assessed against the petitioner if the court finds the

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356 petition to have been filed in bad faith. The petitioner shall
357 also reimburse the state courts system for any amounts paid
358 under subparagraph 1. upon such a finding.

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

361 744.344 Order of appointment.—

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

367 Section 13. Section 744.345, Florida Statutes, is amended
368 to read:

369 744.345 Letters of guardianship.—Letters of guardianship
370 shall be issued to the guardian and shall specify whether the
371 guardianship pertains to the person, or the property, or both,
372 of the ward. The letters must state whether the guardianship is
373 plenary or limited, and, if limited, the letters must state the
374 powers and duties of the guardian. ~~If the guardianship is~~
375 ~~limited,~~ The letters shall state whether or not and to what
376 extent the guardian is authorized to act on behalf of the ward
377 with regard to any advance directive previously executed by the
378 ward.

379 Section 14. Section 744.359, Florida Statutes, is created
380 to read:

381 744.359 Abuse, neglect, or exploitation by a guardian.—

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

383 (2) A guardian has committed exploitation when the
384 guardian:

385 (a) Commits fraud in obtaining appointment as a guardian.

386 (b) Abuses his or her powers.

387 (c) Wastes, embezzles, or intentionally mismanages the
388 assets of the ward.

389 (3) A person who believes that a guardian is abusing,
390 neglecting, or exploiting a ward shall report the incident to
391 the central abuse hotline of the Department of Children and
392 Families.

393 (4) This section shall be interpreted in conformity with
394 s. 825.103.

395 Section 15. Section 744.361, Florida Statutes, is amended
396 to read:

397 744.361 Powers and duties of guardian.—

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

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

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

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

407 (5) A guardian who has special skills or expertise, or is

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408 appointed in reliance upon the guardian's representation that
409 the guardian has special skills or expertise, shall use those
410 special skills or expertise when acting on behalf of the ward.

411 ~~(6)(2)~~ The guardian shall file an initial guardianship
412 report in accordance with s. 744.362.

413 ~~(7)(3)~~ The guardian shall file a guardianship report
414 annually in accordance with s. 744.367.

415 ~~(8)(4)~~ The guardian of the person shall implement the
416 guardianship plan.

417 ~~(9)(5)~~ When two or more guardians have been appointed, the
418 guardians shall consult with each other.

419 ~~(10)(6)~~ A guardian who is given authority over any
420 property of the ward shall:

421 (a) Protect and preserve the property and invest it
422 prudently as provided in chapter 518, apply it as provided in s.
423 744.397, and keep clear, distinct, and accurate records of the
424 administration of the ward's property ~~account for it faithfully.~~

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

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

429 ~~(11)(7)~~ The guardian shall observe the standards in
430 dealing with the guardianship property that would be observed by
431 a prudent person dealing with the property of another, ~~and, if~~
432 ~~the guardian has special skills or is named guardian on the~~
433 ~~basis of representations of special skills or expertise, he or~~

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434 ~~she is under a duty to use those skills.~~

435 (12)~~(8)~~ The guardian, if authorized by the court, shall
436 take possession of all of the ward's property and of the rents,
437 income, issues, and profits from it, whether accruing before or
438 after the guardian's appointment, and of the proceeds arising
439 from the sale, lease, or mortgage of the property or of any
440 part. All of the property and the rents, income, issues, and
441 profits from it are assets in the hands of the guardian for the
442 payment of debts, taxes, claims, charges, and expenses of the
443 guardianship and for the care, support, maintenance, and
444 education of the ward or the ward's dependents, as provided for
445 under the terms of the guardianship plan or by law.

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

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

451 (b) Allow the ward to maintain contact with family and
452 friends unless the guardian believes that such contact may cause
453 harm to the ward.

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

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

459 (e) Notify the court if the guardian believes that the

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460 ward has regained capacity and that one or more of the rights
461 that have been removed should be restored to the ward.

462 (f) To the extent applicable, make provision for the
463 medical, mental, rehabilitative, or personal care services for
464 the welfare of the ward.

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

468 (h) Evaluate the ward's medical and health care options,
469 financial resources, and desires when making residential
470 decisions that are best suited for the current needs of the
471 ward.

472 (i) Advocate on behalf of the ward in institutional and
473 other residential settings.

474 (14) ~~(9)~~ A professional guardian must ensure that each of
475 the guardian's wards is personally visited by the guardian or
476 one of the guardian's professional staff at least once each
477 calendar quarter. During the personal visit, the guardian or the
478 guardian's professional staff person shall assess:

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

480 (b) The appropriateness of the ward's current living
481 situation.

482 (c) The need for any additional services and the necessity
483 for continuation of existing services, taking into consideration
484 all aspects of social, psychological, educational, direct
485 service, health, and personal care needs.

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

488
489 This subsection does not apply to a professional guardian who
490 has been appointed only as guardian of the property.

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

493 744.367 Duty to file annual guardianship report.—

494 (1) Unless the court requires filing on a calendar-year
495 basis, each guardian of the person shall file with the court an
496 annual guardianship plan at least 60 days, but no more than
497 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary
498 month that the letters of guardianship were signed, and the plan
499 must cover the coming fiscal year, ending on the last day in
500 such anniversary month. If the court requires calendar-year
501 filing, the guardianship plan for the forthcoming calendar year
502 must be filed on or after September 1 but no later than December
503 1 of the current year ~~before April 1 of each year.~~

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

506 744.369 Judicial review of guardianship reports.—

507 (8) The approved report constitutes the authority for the
508 guardian to act in the forthcoming year. The powers of the
509 guardian are limited by the terms of the report. The annual
510 report may not grant additional authority to the guardian
511 without a hearing, as provided for in s. 744.331, to determine

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512 that the ward is incapacitated to act in that matter. Unless the
513 court orders otherwise, the guardian may continue to act under
514 authority of the last-approved report until the forthcoming
515 year's report is approved.

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

518 744.3715 Petition for interim judicial review.—

519 (1) At any time, any interested person, including the
520 ward, may petition the court for review alleging that the
521 guardian is not complying with the guardianship plan, ~~or~~ is
522 exceeding his or her authority under the guardianship plan, is
523 acting in a manner contrary to s. 744.361, is denying visitation
524 between the ward and his or her relatives in violation of s.
525 744.361(13), or ~~and the guardian~~ is not acting in the best
526 interest of the ward. The petition for review must state the
527 nature of the objection to the guardian's action or proposed
528 action. Upon the filing of any such petition, the court shall
529 review the petition and act upon it expeditiously.

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

533 744.464 Restoration to capacity.—

534 (3) ORDER OF RESTORATION.—

535 (a) If no objections are filed, and the court is satisfied
536 that ~~with~~ the medical examination establishes by a preponderance
537 of the evidence that restoration of all or some of the ward's

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538 rights is appropriate, the court shall enter an order of
539 restoration of capacity, restoring all or some of the rights
540 which were removed from the ward in accordance with those
541 findings. ~~The order must be issued within 30 days after the~~
542 ~~medical report is filed.~~

543 (b) At the conclusion of a hearing, conducted pursuant to
544 s. 744.1095, the court shall make specific findings of fact and,
545 based on a preponderance of the evidence, enter an order either
546 denying the suggestion of capacity or restoring all or some of
547 the rights which were removed from the ward. The ward has the
548 burden of proving by a preponderance of the evidence that the
549 restoration of capacity is warranted.

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

553 Section 20. Sections 1 and 10 of this act apply to all
554 proceedings filed on or after July 1, 2015. The remaining
555 sections of this act shall take effect on July 1, 2015, and
556 shall apply to all proceedings pending on that date.

557 Section 21. Except as otherwise provided, this act shall
558 take effect upon becoming a law.

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

Remove everything before the enacting clause and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 5 (2015)

Amendment No. 1

564 An act relating to guardianship proceedings; creating s.
565 744.1065, F.S.; authorizing a court to refer guardianship
566 matters to mediation or alternative dispute resolution under
567 certain circumstances; amending ss. 744.107 and 744.1075, F.S.;
568 authorizing a court to appoint the office of criminal conflict
569 and civil regional counsel as a court monitor in guardianship
570 proceedings; amending s. 744.108, F.S.; providing that fees and
571 costs incurred by an attorney who has rendered services to a
572 ward in compensation proceedings are payable from guardianship
573 assets; providing that expert testimony is not required in
574 proceedings to determine compensation for an attorney or
575 guardian; requiring a person offering expert testimony to
576 provide notice to interested persons; providing that expert
577 witness fees are recoverable by the prevailing interested
578 person; amending s. 744.3025, F.S.; providing that a court may
579 appoint a guardian ad litem to represent a minor if necessary to
580 protect the minor's interest in a settlement; providing that a
581 settlement of a minor's claim is subject to certain
582 confidentiality provisions; amending s. 744.3031, F.S.;
583 requiring notification of an alleged incapacitated person and
584 such person's attorney of a petition for appointment of an
585 emergency temporary guardian before a hearing on the petition
586 commences; amending s. 744.309, F.S.; providing that certain
587 for-profit corporations may act as guardian of a person;
588 providing conditions; amending s. 744.3115, F.S.; directing the
589 court to specify authority for health care decisions with

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 5 (2015)

Amendment No. 1

590 respect to a ward's advance directive; amending s. 744.312,
591 F.S.; prohibiting a court from giving preference to the
592 appointment of certain persons as guardians; providing
593 requirements for the appointment of professional guardians;
594 amending s. 744.331, F.S.; directing the court to consider
595 certain factors when determining incapacity; requiring that the
596 examining committee be paid from state funds as court-appointed
597 expert witnesses if a petition for incapacity is dismissed;
598 requiring that a petitioner reimburse the state for such expert
599 witness fees if the court finds the petition to have been filed
600 in bad faith; amending s. 744.344, F.S.; providing conditions
601 under which the court is authorized to appoint an emergency
602 temporary guardian; amending s. 744.345, F.S.; revising
603 provisions relating to letters of guardianship; creating s.
604 744.359, F.S.; prohibiting abuse, neglect, or exploitation of a
605 ward by a guardian; requiring reporting thereof to the
606 Department of Children and Families central abuse hotline;
607 providing for interpretation; amending s. 744.361, F.S.;
608 providing additional powers and duties of a guardian; amending
609 s. 744.367, F.S.; revising the period during which a guardian
610 must file an annual guardianship plan with the court; amending
611 s. 744.369, F.S.; providing for the continuance of a guardian's
612 authority to act under an expired annual report under certain
613 circumstances; amending s. 744.3715, F.S.; providing that an
614 interested party may petition the court regarding a guardian's
615 failure to comply with the duties of a guardian; amending s.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 5 (2015)

Amendment No. 1

616 744.464, F.S.; establishing the burden of proof for determining
617 restoration of capacity of a ward in pending guardianship cases;
618 requiring a court to advance such cases on the calendar;
619 providing applicability; providing an effective date.

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