

By Senator Passidomo

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1                   A bill to be entitled  
2           An act relating to guardianship; amending s. 744.331,  
3           F.S.; requiring each examining committee member in a  
4           proceeding to determine incapacity to file his or her  
5           report with the clerk of the court within a specified  
6           timeframe after appointment; requiring the clerk of  
7           the court to serve each report on specified persons  
8           within a specified timeframe; requiring the clerk of  
9           the court to file a certificate of service of each  
10          report in the incapacity proceeding; revising the  
11          timeframe before the hearing on the petition within  
12          which specified parties must be served with all  
13          reports; authorizing the petitioner and the alleged  
14          incapacitated person to move for a continuance if  
15          service is not timely effectuated and to object to the  
16          introduction of all or any part of a report by filing  
17          and serving a written objection to admissibility on  
18          the other party within a specified timeframe;  
19          specifying that the admissibility of the report is  
20          governed by the rules of evidence; requiring that the  
21          adjudicatory hearing be conducted within a specified  
22          timeframe after the filing of the last filed report;  
23          amending s. 744.3725, F.S.; eliminating the  
24          requirement that a court must first find that a ward's  
25          spouse has consented to dissolution of marriage before  
26          the court may authorize a guardian to exercise  
27          specified rights; amending s. 744.441, F.S.; removing  
28          the cap on funeral expenses that may be paid from a  
29          ward's estate; reenacting s. 744.3215(4), F.S.,  
30          relating to the rights of persons determined  
31          incapacitated, to incorporate the amendment made to s.  
32          744.3725, F.S., in a reference thereto; providing an

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33 effective date.

34  
35 Be It Enacted by the Legislature of the State of Florida:

36  
37 Section 1. Paragraphs (e) and (h) of subsection (3) and  
38 paragraph (a) of subsection (5) of section 744.331, Florida  
39 Statutes, are amended, and paragraph (i) is added to subsection  
40 (3) of that section, to read:

41 744.331 Procedures to determine incapacity.—

42 (3) EXAMINING COMMITTEE.—

43 (e) Each member of the examining committee shall examine  
44 the person. Each examining committee member must determine the  
45 alleged incapacitated person's ability to exercise those rights  
46 specified in s. 744.3215. In addition to the examination, each  
47 examining committee member must have access to, and may  
48 consider, previous examinations of the person, including, but  
49 not limited to, habilitation plans, school records, and  
50 psychological and psychosocial reports voluntarily offered for  
51 use by the alleged incapacitated person. Each member of the  
52 examining committee must file his or her report with the clerk  
53 of the court ~~submit a report~~ within 15 days after appointment.

54 (h) Within 3 days after receipt of each examining committee  
55 member's report, the clerk shall serve the report on the  
56 petitioner's counsel and the attorney for the alleged  
57 incapacitated person, by electronic mail delivery or U.S. mail,  
58 and, upon service, shall file a certificate of service in the  
59 incapacity proceeding. The petitioner's counsel and the attorney  
60 for the alleged incapacitated person must be served with all  
61 reports at least 10 days before the hearing on the petition. If

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62 such service is not timely effectuated, the petitioner or the  
63 alleged incapacitated person may move for a continuance of the  
64 hearing ~~A copy of each committee member's report must be served~~  
65 ~~on the petitioner and on the attorney for the alleged~~  
66 ~~incapacitated person within 3 days after the report is filed and~~  
67 ~~at least 5 days before the hearing on the petition.~~

68 (i) The petitioner and the alleged incapacitated person may  
69 object to the introduction into evidence of all or any portion  
70 of the examining committee members' reports by filing and  
71 -serving a written objection on the other party no later than 5  
72 days before the adjudicatory hearing. The objection must state  
73 the basis upon which the challenge to admissibility is made. If  
74 an objection is timely filed and served, the court shall apply  
75 the rules of evidence in determining the reports' admissibility.  
76 For good cause shown, the court may extend the time to file and  
77 serve the written objection. Only the alleged incapacitated  
78 person and the petitioner are entitled to object to the  
79 admissibility of the reports, unless the court provides  
80 otherwise.

81 (5) ADJUDICATORY HEARING.—

82 (a) Upon appointment of the examining committee, the court  
83 shall set the date upon which the petition will be heard. The  
84 ~~date for the~~ adjudicatory hearing must be conducted at least 10  
85 days, but no more than 30 days, after the filing of the last  
86 filed report of the examining committee members ~~set no more than~~  
87 ~~14 days after the filing of the reports of the examining~~  
88 ~~committee members,~~ unless good cause is shown. The adjudicatory  
89 hearing must be conducted at the time and place specified in the  
90 notice of hearing and in a manner consistent with due process.

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91 Section 2. Section 744.3725, Florida Statutes, is amended  
92 to read:

93 744.3725 Procedure for extraordinary authority.—Before the  
94 court may grant authority to a guardian to exercise any of the  
95 rights specified in s. 744.3215(4), the court must:

96 (1) Appoint an independent attorney to act on the  
97 incapacitated person's behalf, and the attorney must have the  
98 opportunity to meet with the person and to present evidence and  
99 cross-examine witnesses at any hearing on the petition for  
100 authority to act;

101 (2) Receive as evidence independent medical, psychological,  
102 and social evaluations with respect to the incapacitated person  
103 by competent professionals or appoint its own experts to assist  
104 in the evaluations;

105 (3) Personally meet with the incapacitated person to obtain  
106 its own impression of the person's capacity, so as to afford the  
107 incapacitated person the full opportunity to express his or her  
108 personal views or desires with respect to the judicial  
109 proceeding and issue before the court;

110 (4) Find by clear and convincing evidence that the person  
111 lacks the capacity to make a decision about the issue before the  
112 court and that the incapacitated person's capacity is not likely  
113 to change in the foreseeable future; and

114 (5) Be persuaded by clear and convincing evidence that the  
115 authority being requested is in the best interests of the  
116 incapacitated person. ~~;~~ and

117 ~~(6) In the case of dissolution of marriage, find that the~~  
118 ~~ward's spouse has consented to the dissolution.~~

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120 The provisions of this section and s. 744.3215(4) are procedural  
121 and do not establish any new or independent right to or  
122 authority over the termination of parental rights, dissolution  
123 of marriage, sterilization, abortion, or the termination of life  
124 support systems.

125 Section 3. Subsection (16) of section 744.441, Florida  
126 Statutes, is amended to read:

127 744.441 Powers of guardian upon court approval.—After  
128 obtaining approval of the court pursuant to a petition for  
129 authorization to act, a plenary guardian of the property, or a  
130 limited guardian of the property within the powers granted by  
131 the order appointing the guardian or an approved annual or  
132 amended guardianship report, may:

133 (16) Pay reasonable funeral, interment, and grave marker  
134 expenses for the ward from the ward's estate, ~~up to a maximum of~~  
135 ~~\$6,000.~~

136 Section 4. For the purpose of incorporating the amendment  
137 made by this act to section 744.3725, Florida Statutes, in a  
138 reference thereto, subsection (4) of section 744.3215, Florida  
139 Statutes, is reenacted to read:

140 744.3215 Rights of persons determined incapacitated.—

141 (4) Without first obtaining specific authority from the  
142 court, as described in s. 744.3725, a guardian may not:

143 (a) Commit the ward to a facility, institution, or licensed  
144 service provider without formal placement proceeding, pursuant  
145 to chapter 393, chapter 394, or chapter 397.

146 (b) Consent on behalf of the ward to the performance on the  
147 ward of any experimental biomedical or behavioral procedure or  
148 to the participation by the ward in any biomedical or behavioral

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149 experiment. The court may permit such performance or  
150 participation only if:

151 1. It is of direct benefit to, and is intended to preserve  
152 the life of or prevent serious impairment to the mental or  
153 physical health of the ward; or

154 2. It is intended to assist the ward to develop or regain  
155 his or her abilities.

156 (c) Initiate a petition for dissolution of marriage for the  
157 ward.

158 (d) Consent on behalf of the ward to termination of the  
159 ward's parental rights.

160 (e) Consent on behalf of the ward to the performance of a  
161 sterilization or abortion procedure on the ward.

162 Section 5. This act shall take effect July 1, 2017.