

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Passidomo, Mayfield, and Powell

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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 a person's incapacity, to file
5 his or her report with the clerk of the court within a
6 specified timeframe after appointment; requiring the
7 clerk of the court to serve each report on specified
8 persons within a specified timeframe; requiring the
9 clerk of the court to file a certificate of service in
10 the incapacity proceeding; revising the timeframe
11 within which specified parties must be served with all
12 reports; authorizing parties to agree to waive the
13 timeframe; authorizing the petitioner or the alleged
14 incapacitated person to move for a continuance if
15 service is not timely carried out 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. 744.367, F.S.; increasing the timeframe
24 within which a guardian has to file a required annual
25 guardianship plan with the court if the court does not
26 require filing on a calendar-year basis; decreasing
27 the timeframe within which a guardian has to file a
28 required annual guardianship plan with the court if
29 the court requires calendar-year filing; amending s.

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30 744.3725, F.S.; removing the requirement that a court
31 first find that a ward's spouse has consented to
32 dissolution of marriage before the court may authorize
33 a guardian to exercise specified rights; amending s.
34 744.441, F.S.; removing the cap on funeral expenses
35 that may be paid from a ward's estate; reenacting s.
36 744.3215(4), F.S., relating to the rights of persons
37 determined incapacitated, to incorporate the amendment
38 made to s. 744.3725, F.S., in a reference thereto;
39 providing an effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

43 Section 1. Paragraphs (e) and (h) of subsection (3) and
44 paragraph (a) of subsection (5) of section 744.331, Florida
45 Statutes, are amended, and paragraph (i) is added to subsection
46 (3) of that section, to read:

47 744.331 Procedures to determine incapacity.—

48 (3) EXAMINING COMMITTEE.—

49 (e) Each member of the examining committee shall examine
50 the person. Each examining committee member must determine the
51 alleged incapacitated person's ability to exercise those rights
52 specified in s. 744.3215. In addition to the examination, each
53 examining committee member must have access to, and may
54 consider, previous examinations of the person, including, but
55 not limited to, habilitation plans, school records, and
56 psychological and psychosocial reports voluntarily offered for
57 use by the alleged incapacitated person. Each member of the
58 examining committee must file his or her report with the clerk

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59 of the court ~~submit a report~~ within 15 days after appointment.

60 (h) Within 3 days after receipt of each examining committee
61 member's report, the clerk shall serve the report on the
62 petitioner and the attorney for the alleged incapacitated person
63 by electronic mail delivery or United States mail and, upon
64 service, shall file a certificate of service in the incapacity
65 proceeding. The petitioner and the attorney for the alleged
66 incapacitated person must be served with all reports at least 10
67 days before the hearing on the petition, unless the reports are
68 not complete, in which case the petitioner and the attorney for
69 the alleged incapacitated person may waive the 10-day
70 requirement and consent to the consideration of the reports by
71 the court at the adjudicatory hearing. If such service is not
72 timely carried out, the petitioner or the alleged incapacitated
73 person may move for a continuance of the hearing ~~A copy of each~~
74 ~~committee member's report must be served on the petitioner and~~
75 ~~on the attorney for the alleged incapacitated person within 3~~
76 ~~days after the report is filed and at least 5 days before the~~
77 ~~hearing on the petition.~~

78 (i) The petitioner and the alleged incapacitated person may
79 object to the introduction into evidence of all or any portion
80 of the examining committee members' reports by filing and
81 -serving a written objection on the other party no later than 5
82 days before the adjudicatory hearing. The objection must state
83 the basis upon which the challenge to admissibility is made. If
84 an objection is timely filed and served, the court shall apply
85 the rules of evidence in determining the reports' admissibility.
86 For good cause shown, the court may extend the time to file and
87 to serve the written objection.

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88 (5) ADJUDICATORY HEARING.—

89 (a) Upon appointment of the examining committee, the court
90 shall set the date upon which the petition will be heard. The
91 ~~date for the~~ adjudicatory hearing must be conducted at least 10
92 days, which time period may be waived, but no more than 30 days,
93 after the filing of the last filed report of the examining
94 committee members set no more than 14 days after the filing of
95 the reports of the examining committee members, unless good
96 cause is shown. The adjudicatory hearing must be conducted at
97 the time and place specified in the notice of hearing and in a
98 manner consistent with due process.

99 Section 2. Subsection (1) of section 744.367, Florida
100 Statutes, is amended to read:

101 744.367 Duty to file annual guardianship report.—

102 (1) Unless the court requires filing on a calendar-year
103 basis, each guardian of the person shall file with the court an
104 annual guardianship plan within 90 days after ~~at least 60 days,~~
105 ~~but no more than 90 days, before~~ the last day of the anniversary
106 month that the letters of guardianship were signed, and the plan
107 must cover the coming fiscal year, ending on the last day in
108 such anniversary month. If the court requires calendar-year
109 filing, the guardianship plan ~~for the forthcoming calendar year~~
110 must be filed on or before April 1 of each year. The latest
111 annual guardianship plan approved by the court will remain in
112 effect until the court approves a subsequent plan after
113 ~~September 1 but no later than December 1 of the current year.~~

114 Section 3. Section 744.3725, Florida Statutes, is amended
115 to read:

116 744.3725 Procedure for extraordinary authority.—Before the

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117 court may grant authority to a guardian to exercise any of the
118 rights specified in s. 744.3215(4), the court must:

119 (1) Appoint an independent attorney to act on the
120 incapacitated person's behalf, and the attorney must have the
121 opportunity to meet with the person and to present evidence and
122 cross-examine witnesses at any hearing on the petition for
123 authority to act;

124 (2) Receive as evidence independent medical, psychological,
125 and social evaluations with respect to the incapacitated person
126 by competent professionals or appoint its own experts to assist
127 in the evaluations;

128 (3) Personally meet with the incapacitated person to obtain
129 its own impression of the person's capacity, so as to afford the
130 incapacitated person the full opportunity to express his or her
131 personal views or desires with respect to the judicial
132 proceeding and issue before the court;

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

137 (5) Be persuaded by clear and convincing evidence that the
138 authority being requested is in the best interests of the
139 incapacitated person. ~~and~~

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

142
143 The provisions of this section and s. 744.3215(4) are procedural
144 and do not establish any new or independent right to or
145 authority over the termination of parental rights, dissolution

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146 of marriage, sterilization, abortion, or the termination of life
147 support systems.

148 Section 4. Subsection (16) of section 744.441, Florida
149 Statutes, is amended to read:

150 744.441 Powers of guardian upon court approval.—After
151 obtaining approval of the court pursuant to a petition for
152 authorization to act, a plenary guardian of the property, or a
153 limited guardian of the property within the powers granted by
154 the order appointing the guardian or an approved annual or
155 amended guardianship report, may:

156 (16) Pay reasonable funeral, interment, and grave marker
157 expenses for the ward from the ward's estate, ~~up to a maximum of~~
158 ~~\$6,000.~~

159 Section 5. For the purpose of incorporating the amendment
160 made by this act to section 744.3725, Florida Statutes, in a
161 reference thereto, subsection (4) of section 744.3215, Florida
162 Statutes, is reenacted to read:

163 744.3215 Rights of persons determined incapacitated.—

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

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

169 (b) Consent on behalf of the ward to the performance on the
170 ward of any experimental biomedical or behavioral procedure or
171 to the participation by the ward in any biomedical or behavioral
172 experiment. The court may permit such performance or
173 participation only if:

174 1. It is of direct benefit to, and is intended to preserve

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175 the life of or prevent serious impairment to the mental or
176 physical health of the ward; or

177 2. It is intended to assist the ward to develop or regain
178 his or her abilities.

179 (c) Initiate a petition for dissolution of marriage for the
180 ward.

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

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

185 Section 6. This act shall take effect July 1, 2017.