

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 parties to agree to waive the  
14          timeframe; authorizing the petitioner and the alleged  
15          incapacitated person to move for a continuance if  
16          service is not timely effectuated and to object to the  
17          introduction of all or any part of a report by filing  
18          and serving a written objection to admissibility on  
19          the other party within a specified timeframe;  
20          specifying that the admissibility of the report is  
21          governed by the rules of evidence; requiring that the  
22          adjudicatory hearing be conducted within a specified  
23          timeframe after the filing of the last filed report;  
24          amending s. 744.367, F.S.; increasing the time that a  
25          guardian has to file a required annual guardianship

26 | plan with the court if the court does not require  
 27 | filing on a calendar year basis; changing the time  
 28 | that a guardian has to file a required annual  
 29 | guardianship plan with the court if the court requires  
 30 | calendar-year filing; amending s. 744.3725, F.S.;  
 31 | eliminating the requirement that a court must first  
 32 | find that a ward's spouse has consented to dissolution  
 33 | of marriage before the court may authorize a guardian  
 34 | to exercise specified rights; amending s. 744.441,  
 35 | F.S.; removing the cap on funeral expenses that may be  
 36 | paid from a ward's estate; reenacting s. 744.3215(4),  
 37 | F.S., relating to the rights of persons determined  
 38 | incapacitated, to incorporate the amendment made to s.  
 39 | 744.3725, F.S., in a reference thereto; providing an  
 40 | effective date.

41 |

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

43 |

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

48 | 744.331 Procedures to determine incapacity.—

49 | (3) EXAMINING COMMITTEE.—

50 | (e) Each member of the examining committee shall examine

51 | the person. Each examining committee member must determine the  
52 | alleged incapacitated person's ability to exercise those rights  
53 | specified in s. 744.3215. In addition to the examination, each  
54 | examining committee member must have access to, and may  
55 | consider, previous examinations of the person, including, but  
56 | not limited to, habilitation plans, school records, and  
57 | psychological and psychosocial reports voluntarily offered for  
58 | use by the alleged incapacitated person. Each member of the  
59 | examining committee must file his or her report with the clerk  
60 | of the court ~~submit a report~~ within 15 days after appointment.

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

76 ~~on the attorney for the alleged incapacitated person within 3~~  
77 ~~days after the report is filed and at least 5 days before the~~  
78 ~~hearing on the petition.~~

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

89 (5) ADJUDICATORY HEARING.—

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

100 Section 2. Subsection (1) of section 744.367, Florida

101 Statutes, is amended to read:

102 744.367 Duty to file annual guardianship report.—

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

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

117 744.3725 Procedure for extraordinary authority.—Before the  
 118 court may grant authority to a guardian to exercise any of the  
 119 rights specified in s. 744.3215(4), the court must:

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

125 (2) Receive as evidence independent medical,

126 | psychological, and social evaluations with respect to the  
127 | incapacitated person by competent professionals or appoint its  
128 | own experts to assist in the evaluations;

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

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

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

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

143 |  
144 | The provisions of this section and s. 744.3215(4) are procedural  
145 | and do not establish any new or independent right to or  
146 | authority over the termination of parental rights, dissolution  
147 | of marriage, sterilization, abortion, or the termination of life  
148 | support systems.

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

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

157           (16) Pay reasonable funeral, interment, and grave marker  
 158 expenses for the ward from the ward's estate, ~~up to a maximum of~~  
 159 ~~\$6,000.~~

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

164           744.3215 Rights of persons determined incapacitated.—

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

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

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

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

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

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

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

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

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

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