

By Senator Passidomo

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1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.312,
3 F.S.; expanding factors for a court to consider when
4 appointing a guardian; amending s. 744.3215, F.S.;
5 prohibiting a guardian from consenting to or signing
6 on behalf of a ward an order not to resuscitate
7 without court approval; amending s. 744.334, F.S.;
8 revising requirements for a petition for the
9 appointment of a guardian; defining the term
10 "alternatives to guardianship"; prohibiting
11 professional guardians from petitioning for their own
12 appointment except under certain circumstances;
13 defining the term "relative"; amending s. 744.363,
14 F.S.; expanding requirements for initial guardianship
15 plans; amending s. 744.367, F.S.; expanding
16 requirements for annual guardianship reports; defining
17 the term "remuneration"; amending s. 744.3675, F.S.;
18 expanding requirements for annual guardianship plans;
19 amending s. 744.446, F.S.; prohibiting guardians from
20 taking certain actions on behalf of an alleged
21 incapacitated person or minor; revising provisions
22 relating to conflicts of interest; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (e) is added to subsection (3) of
28 section 744.312, Florida Statutes, and subsection (1) of that
29 section is republished, to read:

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30 744.312 Considerations in appointment of guardian.—

31 (1) If the person designated is qualified to serve pursuant
32 to s. 744.309, the court shall appoint any standby guardian or
33 preneed guardian, unless the court determines that appointing
34 such person is contrary to the best interests of the ward.

35 (3) The court shall also:

36 (e) Inquire into and consider potential disqualifications
37 under s. 744.309 and potential conflicts of interest under s.
38 744.446.

39 Section 2. Paragraph (f) is added to subsection (4) of
40 section 744.3215, Florida Statutes, and paragraph (e) of
41 subsection (1) of that section is republished, to read:

42 744.3215 Rights of persons determined incapacitated.—

43 (1) A person who has been determined to be incapacitated
44 retains the right:

45 (e) To have a qualified guardian.

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

48 (f) Consent to or sign on behalf of the ward an order not
49 to resuscitate executed under s. 401.45(3).

50 Section 3. Section 744.334, Florida Statutes, is amended to
51 read:

52 744.334 Petition for appointment of guardian or
53 professional guardian; contents.—

54 (1) Every petition for the appointment of a guardian shall
55 be verified by the petitioner and shall contain statements, to
56 the best of petitioner's knowledge and belief, showing the name,
57 age, residence, and post office address of the alleged
58 incapacitated person or minor; the nature of her or his

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59 incapacity, if any; the extent of guardianship desired, either
60 plenary or limited; the residence and post office address of the
61 petitioner; the names and addresses of the next of kin of the
62 alleged incapacitated person or minor, if known to the
63 petitioner; the name of the proposed guardian and the reasons
64 why she or he should be appointed guardian; whether the proposed
65 guardian is a professional guardian; the relationship and
66 previous relationship of the proposed guardian to the alleged
67 incapacitated person or minor ward; any other type of
68 guardianship under part III of this chapter or alternatives to
69 guardianship that the alleged incapacitated person or minor has
70 designated or is in currently or has been in previously; the
71 reasons why a guardian advocate under s. 744.3085 or other
72 alternatives to guardianship are insufficient to meet the needs
73 of the alleged incapacitated person or minor; and the nature and
74 value of property subject to the guardianship; and the reasons
75 why this person should be appointed guardian. The petition must
76 state whether ~~If~~ a willing and qualified guardian cannot be
77 located, the petition must so state. As used in this subsection,
78 the term "alternatives to guardianship" means an advance
79 directive as defined in s. 765.101, a durable power of attorney
80 as provided in chapter 709, a representative payee under 42
81 U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

82 (2) If the petitioner is a professional guardian, she or he
83 may not petition for her or his own appointment unless the
84 petitioner is a relative of the alleged incapacitated person or
85 minor. For purposes of this subsection, the term "relative"
86 means an individual who would qualify to serve as a nonresident
87 guardian under s. 744.309(2) ~~The petition for appointment of a~~

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88 ~~professional guardian must comply with the provisions of~~
89 ~~subsection (1), and must state that the petitioner is a~~
90 ~~professional guardian.~~

91 Section 4. Subsection (1) of section 744.363, Florida
92 Statutes, is amended to read:

93 744.363 Initial guardianship plan.—

94 (1) The initial guardianship plan shall include all of the
95 following:

96 (a) The provision of medical, mental, or personal care
97 services for the welfare of the ward.~~†~~

98 (b) The provision of social and personal services for the
99 welfare of the ward.~~†~~

100 (c) The place and kind of residential setting best suited
101 for the needs of the ward.~~†~~

102 (d) The application of health and accident insurance and
103 any other private or governmental benefits to which the ward may
104 be entitled to meet any part of the costs of medical, mental
105 health, or related services provided to the ward.~~†~~ ~~and~~

106 (e) Any physical and mental examinations necessary to
107 determine the ward's medical and mental health treatment needs.

108 (f) A list of any preexisting orders not to resuscitate
109 executed under s. 401.45(3) or preexisting advance directives,
110 as defined in s. 765.101, the date an order or directive was
111 signed, whether such order or directive has been suspended by
112 the court, and a description of the steps taken to identify and
113 locate the preexisting order not to resuscitate or advance
114 directive.

115 Section 5. Subsection (3) of section 744.367, Florida
116 Statutes, is amended to read:

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117 744.367 Duty to file annual guardianship report.-

118 (3) (a) The annual guardianship report of a guardian of the
119 property must consist of an annual accounting, and the annual
120 guardianship report of a guardian of the person must consist of
121 an annual guardianship plan. The annual guardianship report of a
122 guardian of the property and the annual guardianship report of a
123 guardian of the person must both include a declaration of all
124 remuneration received by the guardian from any source for
125 services rendered to or on behalf of the ward. As used in this
126 paragraph, the term "remuneration" means any payment or other
127 benefit made directly or indirectly, overtly or covertly, or in
128 cash or in kind to the guardian.

129 (b) The annual guardianship report must ~~shall~~ be served on
130 the ward, unless the ward is a minor or is totally
131 incapacitated, and on the attorney for the ward, if any. The
132 guardian shall provide a copy to any other person as the court
133 may direct.

134 Section 6. Paragraph (d) is added to subsection (1) of
135 section 744.3675, Florida Statutes, to read:

136 744.3675 Annual guardianship plan.-Each guardian of the
137 person must file with the court an annual guardianship plan
138 which updates information about the condition of the ward. The
139 annual plan must specify the current needs of the ward and how
140 those needs are proposed to be met in the coming year.

141 (1) Each plan for an adult ward must, if applicable,
142 include:

143 (d) A list of any preexisting orders not to resuscitate
144 executed under s. 401.45(3) or preexisting advance directives,
145 as defined in s. 765.101, the date an order or directive was

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146 signed, whether such order or directive has been suspended by
147 the court, and a description of the steps taken to identify and
148 locate the preexisting order not to resuscitate or advance
149 directive.

150 Section 7. Present subsections (2), (3), and (4) of section
151 744.446, Florida Statutes, are redesignated as subsections (3),
152 (4), and (5), respectively, a new subsection (2) is added to
153 that section, and present subsection (2) of that section is
154 amended, to read:

155 744.446 Conflicts of interest; prohibited activities; court
156 approval; breach of fiduciary duty.—

157 (2) A guardian may not offer, pay, solicit, or receive a
158 commission, benefit, bonus, rebate, or kickback, directly or
159 indirectly, overtly or covertly, in cash or in kind, or engage
160 in a split-fee arrangement in return for referring, soliciting,
161 or engaging in a transaction for goods or services on behalf of
162 an alleged incapacitated person or minor, or a ward, for past or
163 future goods or services.

164 (3)~~(2)~~ Unless prior approval is obtained by court order, or
165 unless such relationship existed before ~~prior to~~ appointment of
166 the guardian and is disclosed to the court in the petition for
167 appointment of guardian, a guardian may not:

168 (a) Have any interest, financial or otherwise, direct or
169 indirect, in any business transaction or activity with the ward,
170 the judge presiding over the case, any member of the appointed
171 examining committee, any court employee involved in the
172 guardianship process, or the attorney for the ward;

173 (b) Acquire an ownership, possessory, security, or other
174 pecuniary interest adverse to the ward;

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175 (c) Be designated as a beneficiary on any life insurance
176 policy, pension, or benefit plan of the ward unless such
177 designation was validly made by the ward before ~~prior to~~
178 adjudication of incapacity of the ward; and

179 (d) Directly or indirectly purchase, rent, lease, or sell
180 any property or services from or to any business entity of which
181 the guardian or the guardian's spouse or any of the guardian's
182 lineal descendants, or collateral kindred, is an officer,
183 partner, director, shareholder, or proprietor, or has any
184 financial interest.

185 Section 8. This act shall take effect July 1, 2020.