

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1098

INTRODUCER: Children, Families, and Elder Affairs Committee, Judiciary Committee and Senator Burton

SUBJECT: Withholding or Withdrawal of Life-prolonging Procedures

DATE: March 29, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Collazo</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1098 regulates the authority of a court-appointed guardian to consent to withhold or withdraw life-prolonging procedures, or sign an order not to resuscitate, on behalf of a ward. The bill allows the ward's wishes to be followed without delay, but still requires court approval to withhold or withdraw life-prolonging procedures in some cases.

Specifically, the bill creates a statute that:

- Authorizes a guardian of a ward's person to petition a court for authority to consent to withhold or withdraw life-prolonging procedures, if the guardian lacks sufficient authority to consent or if the proposal is in conflict with the wishes of the ward or the ward's next of kin.
- Requires the court to hold a hearing on the petition if it has been notified of an objection or conflict, or if the court has insufficient information to determine whether the criteria for granting the requested authority has been met.
- Requires the court to hold a preliminary hearing within 72 hours after the petition is filed, if a hearing is required and exigent circumstances are alleged, and either rule on the requested relief immediately or conduct an evidentiary hearing within 4 days.
- Allows a guardian without vested authority to consent to the withholding or withdrawal of life-prolonging procedures, without a hearing or prior court approval, if:
 - The ward is in a hospital and the ward's primary physician and at least one other consulting physician document that the ward's death is imminent;

- The guardian has notified known next of kin as to the intent to withhold or withdraw life-prolonging procedures and there is no known objection to the withholding or withdrawing of life-prolonging procedures by the ward, the next of kin, or any other interested person, and the hospital ethics committee has met and agrees with the guardian's proposal.

The bill also amends existing statutes to:

- Require initial and annual guardianship plans to state whether an advance directive or an order to not resuscitate listed therein remains in effect, or state the extent to which their authority to make health care decisions has been transferred by the court to the guardian.
- Provide that a surrogate under an advance directive, or an agent under a durable power of attorney, who has retained the authority to make health care decisions under the initial and annual guardianship plans may exercise that authority without additional approval by the court.
- Provide that any authority to make health care decisions that has been transferred by the court to the guardian may be exercised by the guardian, consistent with the advance directive or the durable power of attorney, and without additional approval by the court, unless there is a conflict over or objection to the guardian's proposed exercise of that authority.

The bill takes effect on July 1, 2023.

II. Present Situation:

Guardians and Guardianship

A “guardian” is someone who has been given the legal duty and authority to care for another person or his or her property because of that person's infancy, disability, or incapacity.¹ A “guardianship” is a trust relationship designed to protect vulnerable members of society who do not have the ability to protect themselves.² The person for whom a guardian is appointed in a guardianship is called a “ward.”³

Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.⁴ Guardianships are generally disfavored because the ward loses his or her individual and civil rights; a guardian may be appointed only if the court finds there is no less restrictive alternative to a guardianship.⁵

There are two main forms of guardianship: guardianship over the person, and guardianship over the property – each of which may be limited or plenary. For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage some or all of his

¹ BLACK'S LAW DICTIONARY (11th ed., 2019).

² *See Id.*

³ Section 744.102(22), F.S.

⁴ *See s. 744.102(9), F.S.*

⁵ Section 744.1012(1)-(2), F.S.; *see also* Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited March 11, 2023).

or her own affairs.⁶ If the adult is competent, this can be accomplished voluntarily. However, if an individual's mental competence is in question, an involuntary guardianship may be established through an adjudication of incompetence, which is determined by a court-appointed examination committee.⁷

A guardianship must be specific to the abilities and needs of the individual and should never be more restrictive than necessary.⁸ Consequently, state law recognizes different types of guardians and guardianship arrangements, including⁹ preneed guardians;¹⁰ voluntary guardianship;¹¹ emergency temporary guardianship;¹² limited guardianship;¹³ guardian advocates for individuals who have a developmental disability¹⁴ or for individuals receiving mental health treatment;¹⁵ and full (*i.e.* plenary) guardianship.¹⁶

Powers and Duties of Court-Appointed Guardians

The powers and duties of a court-appointed guardian may include:

- Filing an initial plan and annual reports.¹⁷
- Making provision for the medical, mental, rehabilitative, and personal care of the person.¹⁸
- Making residential decisions on behalf of the person.¹⁹
- Advocating on behalf of the person in institutional and other residential settings.²⁰
- Making financial decisions on behalf of the person.²¹

On the other hand, certain actions require specific authority from the court before a guardian may take them.²² In particular, a guardian may not:

- Commit the ward to a facility, institution, or licensed service provider without formal placement proceedings pursuant to state law.
- Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure, or to the participation by the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if it is:
 - Of direct benefit to, and is intended to preserve the life of or prevent serious impairment to, the mental or physical health of the ward; or

⁶ See generally, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. Section 744.102(9)(b), F.S.

⁷ See generally, s. 744.102(12), F.S.; see also ch. 744, pt. V, F.S. (regarding the adjudication of incapacity and appointment of guardians).

⁸ Section 744.1012(2), F.S.; see also Disability Rights Florida, *supra* note 5.

⁹ See generally Disability Rights Florida, *supra* note 5.

¹⁰ Sections 744.3045 and 744.3046, F.S.

¹¹ Section 744.341, F.S.

¹² Section 744.3031, F.S.

¹³ Section 744.441(1), F.S.; see also s. 744.102(9)(a), F.S. (defining "limited guardian").

¹⁴ Sections 744.3085 and 393.12, F.S.

¹⁵ Sections 744.3085 and 394.4598, F.S.

¹⁶ Section 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining "plenary guardian").

¹⁷ Section 744.361(6)-(7), F.S.

¹⁸ Section 744.361(13)(f), F.S.

¹⁹ See s. 744.361(13)(h), F.S.

²⁰ Section 744.361(13)(i), F.S.

²¹ See s. 744.361(12), F.S.

²² See ss. 744.3725 and 744.3215(4), F.S.

- Intended to assist the ward with developing or regaining his or her abilities.
- Initiate a petition for dissolution of marriage for the ward.
- Consent on behalf of the ward to termination of the ward's parental rights.
- Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.²³

State courts have long recognized the relationship between a guardian and his or her ward is a fiduciary one.²⁴ A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of the other, upon matters within the scope of that relationship.²⁵ Such duties include, but are not limited to, duties to refrain from self-dealing, of loyalty, to not take unfair advantage of the ward and to act in the best interest of the ward, and to disclose material facts.²⁶

State law also imposes specific duties upon guardians consistent with the basic duties of a fiduciary, including protecting and preserving the property of the ward as well as his or her overall physical and social health.²⁷ For example, as noted above, guardians must file initial²⁸ and annual guardianship reports,²⁹ and an annual accounting of the ward's property, with the court;³⁰ such reports may be deemed evidence of a guardian's faithful execution of his or her fiduciary duties.³¹

An overriding concern of reviewing courts is that guardian fiduciaries not breach their duties to their wards or abuse their positions. If a guardian breaches his or her fiduciary duty, the court must take action to protect the ward and the ward's assets.³²

Initial and Annual Guardianship Plans

Guardians must file an initial guardianship report with the court. It must be filed within 60 days after appointment and, for a guardian of the person, include an initial guardianship plan.³³ Initial guardian plans must contain certain specified information regarding the ward. Among other things, the initial plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the ward; the kind of residential setting best suited for the needs of the ward; the provision of social and personal services for the welfare of the ward; and a list of any preexisting orders not to resuscitate or advance directives.³⁴

²³ *Id.*

²⁴ *See, e.g., In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990) (noting that the guardian in that case was found to have violated his fiduciary duty as a guardian); *Denarii Systems, LLC v. Tellez*, 2011 WL 13322664 (S.D. Fla. 2011) (recognizing that fiduciary duties may be created by legal proceedings, such as in the case of a guardian and ward).

²⁵ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002) (internal citations omitted).

²⁶ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

²⁷ *See generally* s. 744.361, F.S.

²⁸ Section 744.362, F.S.

²⁹ Section 744.367, F.S.

³⁰ Section 744.3678, F.S.

³¹ *See generally* s. 744.368, F.S. (directing the clerk of the circuit court to review each initial and annual guardianship report to ensure it contains specified information about the ward).

³² Section 744.446(5), F.S.

³³ Sections 744.361(6) and 744.362(1), F.S.

³⁴ *See* s. 744.363(1)(a)-(f), F.S.

Guardians must also file an annual guardianship report with the court. The annual guardianship report must be filed within 90 days after the last day of the anniversary month of appointment. The annual plan must cover the coming fiscal year, ending on the last day in the anniversary month.³⁵ Similar to the initial guardianship report, the annual guardianship report for a guardian of the person must include an annual guardianship plan³⁶ containing information regarding the medical and mental health conditions, treatment, and rehabilitation needs of the ward; the residence of the ward; the social condition of the ward; and a list of any preexisting orders not to resuscitate or advance directives.³⁷

Determining Incapacity

The process to determine incapacity and appoint a guardian begins with the filing of a petition in the appropriate circuit court. The petition must be served on, and read to, the allegedly incapacitated person. Notice and copies of the petition must also be provided to the attorney for the allegedly incapacitated person and served on all next of kin identified in the petition.³⁸

At hearing, the partial or total incapacity of the person must be established by clear and convincing evidence.³⁹ After finding that a person is incapacitated with respect to the potential exercise of one or more rights, the court must enter a written order of incapacity. A person is deemed incapacitated only as to those rights specified in the court's order.⁴⁰ If the order provides that the person is incapable of exercising delegable rights (described below), the court must next consider whether there are any alternatives to guardianship which will sufficiently address the incapacitated person's problems. If not, a guardian will be appointed.⁴¹

Rights of Incapacitated Persons

A person who has been determined to be incapacitated retains certain rights, regardless of the determination of incapacity, including the right to be treated humanely and with dignity and respect; the right to be protected against abuse, neglect, and exploitation; the right to receive visitors and communicate with others; and the right to privacy.⁴²

Certain rights may be removed from a person by an order determining incapacity, but not delegated to a guardian. They include the right to marry (if the right to enter into a contract has been removed, the right to marry is subject to court approval); the right to vote; the right to personally apply for government benefits; the right to have a driver license; the right to travel; and the right to seek or retain employment.⁴³

³⁵ Section 744.367(1), F.S.

³⁶ Section 744.367(1) and (3)(a), F.S.

³⁷ Section 744.3675, F.S.

³⁸ Section 744.331(1), F.S.

³⁹ Section 744.331(5)(c), F.S.

⁴⁰ Section 744.331(6), F.S.

⁴¹ Section 744.331(6)(b), F.S.

⁴² See s. 744.3215(1)(a)-(o), F.S. (specifying all retained rights).

⁴³ Section 744.3215(2)(a)-(f), F.S.

Additionally, certain other “delegable” rights may be removed from a person by an order determining incapacity, and also delegated to a guardian. They include the rights to:

- Contract.
- Sue and defend lawsuits.
- Apply for government benefits.
- Manage property or to make any gift or disposition of property.
- Determine his or her residence.
- Consent to medical and mental health treatment.
- Make decisions about his or her social environment or other social aspects of his or her life.⁴⁴

Advance Directives

State law defines an advance directive as a witnessed, oral statement or written instruction that expresses a person’s desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.⁴⁵ Designation of each of these can serve different purposes and have their own unique requirements and specifications under the law.⁴⁶

One type of advance directive, an “order not to resuscitate” or a “do not resuscitate order,” results in the withholding of cardiopulmonary resuscitation from an individual if the order is presented to the health care professional treating the patient.⁴⁷ For the order to be valid, it must be on the yellow form adopted by the Department of Health, signed by the patient’s physician and by the patient, or if the patient is incapacitated, the patient’s health care surrogate or proxy, court-appointed guardian, or agent under a durable power of attorney.⁴⁸

It is the responsibility of the Emergency Medical Services provider to ensure that the order form or the patient identification device, which is a miniature version of the form, accompanies the patient.⁴⁹ An order not to resuscitate may be revoked by the patient at any time, if signed by the patient, or the patient’s health care surrogate, proxy, court-appointed guardian or a person acting under a durable power of attorney.⁵⁰

A power of attorney is a writing that grants authority to an agent to act in the place of the principal.⁵¹ A “durable” power of attorney is a kind of power of attorney that cannot be terminated by the principal’s incapacity.⁵² Among many other things, a durable power of

⁴⁴ Section 744.3215(3)(a)-(g), F.S.

⁴⁵ Section 765.101(1), F.S.

⁴⁶ *See id.*

⁴⁷ *See* Fla. Admin. Code R. 64J-2.018(1).

⁴⁸ Section 401.45(3), F.S.; *see also* Fla. Admin. Code R. 64J-2.018(1)-(3).

⁴⁹ Fla. Admin. Code R. 64J-2.018(2)(b) and (4).

⁵⁰ Fla. Admin. Code R. 64J-2.018(6).

⁵¹ Section 709.2102(9), F.S.

⁵² Section 709.2102(4), F.S.; *see also* s. 709.2104 (specifying that a power of attorney is durable if it contains the words: “This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes,” or similar words that show the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent incapacity).

attorney may be used to allow another person to make health care decisions on behalf of an incapacitated principal.⁵³

Hospital Ethics Committees

Hospital ethics committees discuss and make recommendations about clinical ethical issues in a hospital.⁵⁴ Such committees are a resource for medical staff and administrators in addressing the difficult ethical questions and compliance issues that arise in patient care, including the proper respect for patient confidentiality or concerns about a patient's refusal of life-saving treatment.⁵⁵ They are typically multi-disciplinary in nature, consisting of representatives from different departments of the facility, including medicine, nursing, law, pastoral care, and social work.⁵⁶

The Florida Bioethics Network is an organization dedicated to the understanding and resolution of ethical and legal problems arising in health care and research in the state's hospitals, hospices, nursing homes, managed care organizations and teaching institutions.⁵⁷

III. Effect of Proposed Changes:

In 2020, in response to reports that a professional guardian had signed an order not to resuscitate against her ward's wishes, the Legislature began requiring guardians to obtain court approval to sign orders not to resuscitate.⁵⁸ Some courts went even further, also requiring court approval for a guardian to consent to withhold or withdraw life-prolonging procedures. These requirements, however, may result in prolonged suffering and be inconsistent with the ward's wishes.

The bill creates or amends several sections within the state's guardianship statutes⁵⁹ to regulate the authority of a court-appointed guardian to consent to withhold or withdraw life-prolonging procedures, or to sign an order not to resuscitate, on behalf of his or her ward. The bill allows a ward's wishes to be followed without delay, but still requires court approval to withhold or withdraw life-prolonging procedures in some cases.

⁵³ See *id.*; see also The Florida Bar, *Consumer Pamphlet: Florida Power of Attorney, About the Power of Attorney*, available at <https://www.floridabar.org/public/consumer/pamphlet13/#about> (last visited March 11, 2023).

⁵⁴ Alaska Regional Hospital, *Alaska Regional Hospital's Ethics Committee* (Apr. 16, 2018), available at <https://www.alaskaregional.com/blog/entry/alaska-regional-hospital-s-ethics-committee>; see also F. Hajibabae et al., *Hospital/clinical ethics committees' notion: an overview*, 9 J. MED. ETHICS HIST. MED. 17 (Dec. 18, 2016) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5432947/> (explaining that a healthcare ethics committee or hospital ethics committee is a body of persons established by a hospital or health care institution for the purpose of considering, debating, studying, taking action on, or reporting on ethical issues that arise in patient care) (all sites last visited March 11, 2023).

⁵⁵ Alaska Regional Hospital, *supra* note 54.

⁵⁶ Thaddeus Mason Pope, *The Growing Power of Healthcare Ethics Committees Heightens Due Process Concerns*, 15 CARDOZO JOURNAL OF CONFLICT RESOLUTION 425 (2014), available at <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1278&context=facsch> (last visited March 11, 2023).

⁵⁷ Florida Bioethics Network, *About Us*, available at <https://fbn.miami.edu/about-us/index.html> (last visited March 11, 2023).

⁵⁸ Ch. 2020-35, s. 6, Laws of Fla.; see also Greg Angel, *DeSantis Signs Florida Guardianship Bill Into Law, Expanding Oversight of Program* (Jun. 19, 2020), Spectrum News 13, available at <https://www.mynews13.com/fl/orlando/news/2020/06/19/desantis-signs-florida-guardianship-bill-into-law> (last visited March 11, 2023).

⁵⁹ Chapter 744, F.S.

Guardianship Powers Regarding Life-Prolonging Procedures

The bill creates s. 744.4431, F.S., entitled “Guardianship power regarding life-prolonging procedures.”

The bill authorizes a guardian of a ward’s person to petition a court pursuant to the Florida Probate Rules for authority to consent to withhold or withdraw life-prolonging procedures if:

- The right to consent to withhold or withdraw life-prolonging procedures has not been delegated to the guardian in the order appointing the guardian.
- Sufficient authority under the ward’s preexisting advance directive or durable power of attorney has not been transferred to the guardian.
- The proposed withholding or withdrawal of life-prolonging procedures is in conflict with the wishes, as presently or previously expressed, of the ward, the ward’s next of kin, or any interested person.

The bill requires the petition by the guardian to:

- Describe the proposed action for which court approval is sought and supply documentation of any existing authority for the guardian to make health care decisions for the ward.
- Notify the court of any known objections to the proposed action or of conflicts between the guardian’s proposed action to withhold or withdraw life-prolonging procedures and the wishes, presently or previously expressed, of the ward, the ward’s next of kin, or any interested person.
- Describe the circumstances or evidence and include affidavits or supporting documentation showing that the proposed action satisfies the applicable criteria in the statutes providing for health care decision proxies⁶⁰ or governing individuals who are in a persistent vegetative state.⁶¹

The bill requires the guardian to serve notice of the petition, and of any hearing, upon interested persons and the ward’s next of kin, unless waived by the court.

The bill requires the court to hold a hearing on the petition if it has been notified of an objection or conflict, or if the court has insufficient information to determine whether the criteria for granting the requested authority has been met. If a hearing is required and exigent circumstances are alleged, the court must hold a preliminary hearing within 72 hours after the petition is filed and do one of the following:

- Rule on the relief requested immediately after the preliminary hearing.
- Conduct an evidentiary hearing within 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

The bill provides that notwithstanding the requirements for court approval described in the bill, and if authority to withhold or withdraw life-prolonging procedures has not been vested in

⁶⁰ See generally s. 765.401, F.S.

⁶¹ See generally s. 765.404, F.S.

another person, the guardian may, without a hearing or prior court approval, consent to the withholding or withdrawal of life-prolonging procedures if:

- The ward is in a hospital and the ward's primary physician and at least one other consulting physician document that the ward's death is imminent;
- The guardian has notified known next of kin as to the intent to withhold life-prolonging procedures and there is no known objection to the withholding or withdrawing life-prolonging procedures by the ward, the next of kin, or any other interested person; and
- The hospital ethics committee has met and agrees with the guardian's proposal to withhold or withdraw life prolonging procedures. If the hospital does not have an ethics committee, it may arrange for this requirement to be satisfied by an ethics committee of another facility or a community-based ethics committee approved by the Florida Bioethics Network.

Rights of Persons Determined Incapacitated

State law includes a list of rights that may be removed from a person by an order determining incapacity and which may be delegated to a guardian.⁶² The bill amends this list to include the right to consent to the withholding or withdrawal of life-prolonging procedures⁶³ and subject to court approval as provided in the bill, if there are not valid advance directives, as defined in s. 765.101, and no valid alternative to guardianship that will sufficiently address the withholding or withdrawal of life-prolonging procedures.

Initial and Annual Guardianship Plans

The bill amends the statutes regulating the contents of initial⁶⁴ and annual⁶⁵ guardianship plans. Specifically, with respect to any signed orders not to resuscitate⁶⁶ or preexisting advance directives identified in the plans,⁶⁷ the bill requires the plan to state whether the order or the directive has been revoked, modified, or suspended by the court, or the extent to which authority under an order or directive has been transferred by the court to the guardian. The plan must also state the date of any revocation, modification, or suspension by the court.

The bill provides that either a surrogate designated by the ward in an advance directive, or an agent designated by the ward in a durable power of attorney, who retains authority to make health care decisions under the guardianship plan, may exercise that authority without additional approval by the court. Any authority of a surrogate or agent that has been transferred to a guardian may be exercised by the guardian, consistent with the advance directive or durable power of attorney, without additional approval by the court. And any power transferred to a

⁶² Section 744.3215(3), F.S.

⁶³ Section 765.101(12), F.S., defines "life-prolonging procedure" to mean any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

⁶⁴ Section 744.363, F.S.

⁶⁵ Section 744.3675, F.S.

⁶⁶ See s. 401.45(3), F.S., for a full description of the requirements for issuance of a valid order not to resuscitate.

⁶⁷ See s. 765.101(1), F.S., defines "advance directive" to mean a witnessed written document or oral statement in which instructions are given by a principal or in which the principal's desires are expressed concerning any aspect of the principal's health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of this chapter..

guardian to execute an order not to resuscitate or to consent to withhold or withdraw life-prolonging procedures is subject to court approval pursuant to the new statute created by the bill (s. 744.4431, F.S.) if there is a conflict over or objection to a proposed exercise of that power.

Guardian Powers upon Court Approval

The bill also implements conforming changes to the statute providing for the powers of guardians upon court approval.⁶⁸

Effective Date

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, a surrogate under an advance directive, or an agent under a durable power of attorney, who has retained the authority to make health care decisions under the initial and annual guardianship plans may exercise that authority without additional approval by the court. Similarly, a guardian to whom the authority to make health care decisions has

⁶⁸ Section 744.441, F.S.

been transferred by the court may exercise that authority, consistent with the advance directive or the durable power of attorney and without additional approval by the court, unless there is a conflict over or objection to the guardian's proposed exercise of that authority. Accordingly, surrogates, agents, and guardians will in many cases be able to consent to the withholding or withdrawing of life-prolonging procedures, and sign orders to not resuscitate, without incurring the legal costs associated with seeking and obtaining court approval.

C. Government Sector Impact:

For the reasons stated above in the private sector impact, the bill will allow surrogates, agents, and guardians to in certain circumstances consent to the withholding or withdrawing of life-prolonging procedures, and sign orders to not resuscitate, without court approval. As a result, the bill may result in a positive fiscal impact to the courts from the reduction in workload as a result of less status and evidentiary hearings related to such decisions.

The Office of the State Courts Administrator states that the fiscal impact of the bill is indeterminate due to the unavailability of data needed to quantifiably establish the increase in judicial time and workload as a result of new judicial processes and hearing requirements related to petitions for withholding or withdrawal of life-prolonging procedures of incapacitated persons.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.3215, 744.363, 744.3675, and 744.441.

This bill creates section 744.4431 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Children, Families, and Elder Affairs on March 14, 2023:

The committee substitute:

⁶⁹ The Office of the State Courts Administrator, *Agency Analysis of SB 1098*, March 6, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Delegates the right to consent to the withholding or withdrawal of life prolonging procedures, as defined in s. 765.101, subject to court-approval, only if there are not valid advance directives, as defined in s. 765.101, and there is also no valid alternative to guardianship that will sufficiently address the withholding or withdrawal of life-prolonging procedures.
- Modifies the conditions under which consent to the withholding or withdrawing of life-prolonging procedures may occur if the authority to withhold or withdraw life-prolonging procedures has not been vested in another person.
- Specifically, a guardian may, with or without court approval, consent to the withholding or withdrawing of life-prolonging procedures only if:
 - The ward is in a hospital and the ward's primary physician and at least one other consulting physician document that the ward's death is imminent;
 - The guardian has notified the next of kin as to the intent to withhold or withdraw life-prolonging procedures and there is no known objection to the withholding or withdrawing of life-prolonging procedures by the ward, the next of kin, or any other interested person; and
 - The hospital ethics committee has met and agrees with the guardian's proposal to withhold or withdraw life-prolonging procedures.

CS by Judiciary on March 7, 2023:

The committee substitute corrects two cross-references.

B. Amendments:

None.