

By Senator Burton

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1 A bill to be entitled
2 An act relating to withholding or withdrawal of life-
3 prolonging procedures; amending s. 744.3215, F.S.;
4 authorizing the court to delegate the right to consent
5 to the withholding or withdrawal of life-prolonging
6 procedures of incapacitated persons in certain
7 circumstances; amending ss. 744.363 and 744.3675,
8 F.S.; making technical changes; requiring initial and
9 annual guardianship plans, respectively, to state
10 whether any power under the ward's preexisting order
11 not to resuscitate or advance directive is revoked,
12 modified, suspended, or transferred to the guardian;
13 requiring such plans to state the date of such action;
14 establishing certain authority without additional
15 court approval; requiring a guardian to obtain court
16 approval to exercise transferred power to execute an
17 order not to resuscitate or consent to withhold or
18 withdraw life-prolonging procedures under certain
19 circumstances; creating s. 744.4431, F.S.; authorizing
20 a guardian to petition a court for approval to consent
21 to withhold or withdraw life-prolonging procedures
22 under certain circumstances; specifying requirements
23 for the petition; requiring the guardian to serve
24 certain notices; specifying procedures that must be
25 followed by the court in acting on the petition;
26 authorizing the guardian to withhold or withdraw life-
27 prolonging procedures without a hearing or court
28 approval under certain circumstances; amending s.
29 744.441, F.S.; making technical changes; deleting

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30 provisions regarding the authority of certain
31 guardians to sign an order not to resuscitate;
32 providing an effective date.
33

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

36 Section 1. Paragraph (h) is added to subsection (3) of
37 section 744.3215, Florida Statutes, to read:

38 744.3215 Rights of persons determined incapacitated.—

39 (3) Rights that may be removed from a person by an order
40 determining incapacity and which may be delegated to the
41 guardian include the right:

42 (h) To consent to the withholding or withdrawal of life-
43 prolonging procedures as defined in s. 765.101, subject to court
44 approval as provided in s. 744.4431 if there is a conflict over
45 or objection to the proposed exercise of that authority.

46 Section 2. Present subsections (2) through (6) of section
47 744.363, Florida Statutes, are redesignated as subsections (3)
48 through (7), respectively, paragraph (g) is added to subsection
49 (1) and a new subsection (2) is added to that section, and
50 paragraph (f) of subsection (1) of that section is amended, to
51 read:

52 744.363 Initial guardianship plan.—

53 (1) The initial guardianship plan shall include all of the
54 following:

55 (f) 1. A list of any preexisting:

56 a. Orders not to resuscitate as described in ~~executed under~~
57 s. 401.45(3) and the date such orders were signed; or

58 b. ~~Preexisting~~ Advance directives, as defined in s. 765.101

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59 ~~and~~, the date such directives were signed. ~~an order or directive~~
60 ~~was signed,~~

61 2. For each item listed under subparagraph 1., the plan
62 must state whether the ~~such~~ order or directive has been revoked,
63 modified, or suspended by the court or the extent to which
64 authority under an order or directive has been transferred by
65 the court to the guardian. The plan must also state the date of
66 such action by the court.

67 (g) ~~, and~~ A description of the steps taken to identify and
68 locate a ~~the~~ preexisting order not to resuscitate or advance
69 directive.

70 (2) A surrogate designated by the ward in an advance
71 directive or an agent designated by the ward in a durable power
72 of attorney who retains authority to make health care decisions
73 under the guardianship plan may exercise retained authority
74 without additional approval by the court. Any authority of the
75 surrogate to carry out the instructions in the advance directive
76 or authority of the agent under a durable power of attorney
77 which is transferred to the guardian may be exercised by the
78 guardian, consistent with the advance directive or durable power
79 of attorney, without additional approval by the court. Any
80 authority transferred to the guardian to execute an order not to
81 resuscitate or to consent to withhold or withdraw life-
82 prolonging procedures is subject to court approval pursuant to
83 s. 744.441 if there is a conflict over or objection to a
84 proposed exercise of that authority.

85 Section 3. Present subsections (2), (3), and (4) of section
86 744.3675, Florida Statutes, are redesignated as subsections (3),
87 (4), and (5), respectively, paragraph (e) is added to subsection

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88 (1) and a new subsection (2) is added to that section, and
 89 paragraph (d) of subsection (1) of that section is amended, to
 90 read:

91 744.3675 Annual guardianship plan.—Each guardian of the
 92 person must file with the court an annual guardianship plan
 93 which updates information about the condition of the ward. The
 94 annual plan must specify the current needs of the ward and how
 95 those needs are proposed to be met in the coming year.

96 (1) Each plan for an adult ward must, if applicable,
 97 include:

98 (d) 1. A list of any preexisting:

99 a. Orders not to resuscitate as described in ~~executed under~~
 100 s. 401.45(3) and the date such orders were signed; or

101 b. ~~Preexisting~~ Advance directives, as defined in s. 765.101
 102 and, the date such directives were signed. ~~an order or directive~~
 103 ~~was signed,~~

104 2. For each item listed under subparagraph 1., the plan
 105 must state whether the such order or directive has been revoked,
 106 modified, or suspended by the court or the extent to which
 107 authority under an order or directive has been transferred by
 108 the court to the guardian. The plan must also state the date of
 109 any revocation, modification, or suspension by the court.

110 (e) ~~, and~~ A description of the steps taken to identify and
 111 locate a ~~the~~ preexisting order not to resuscitate or advance
 112 directive.

113 (2) A surrogate designated by the ward in an advance
 114 directive or an agent designated by the ward in a durable power
 115 of attorney who retains authority to make health care decisions
 116 under the guardianship plan may exercise retained authority

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117 without additional approval by the court. Any authority of the
118 surrogate to carry out the instructions in the advance directive
119 or authority of the agent under a durable power of attorney
120 which is transferred to the guardian may be exercised by the
121 guardian, consistent with the advance directive or durable power
122 of attorney, without additional approval by the court. Any
123 authority transferred to the guardian to execute an order not to
124 resuscitate or to consent to withhold or withdraw life-
125 prolonging procedures is subject to court approval pursuant to
126 s. 744.441 if there is a conflict over or objection to a
127 proposed exercise of that authority.

128 Section 4. Section 744.4431, Florida Statutes, is created
129 to read:

130 744.4431 Guardianship power regarding life-prolonging
131 procedures.-

132 (1) A guardian of a ward's person may petition a court
133 pursuant to the Florida Probate Rules for authority to consent
134 to withhold or withdraw life-prolonging procedures for any of
135 the following reasons:

136 (a) The right to consent to withhold or withdraw life-
137 prolonging procedures has not been delegated to the guardian in
138 the order appointing the guardian.

139 (b) Sufficient authority under the ward's preexisting
140 advance directive or durable power of attorney has not been
141 transferred to the guardian.

142 (c) The proposed withholding or withdrawal of life-
143 prolonging procedures is in conflict with the wishes, as
144 presently or previously expressed, of the ward, the ward's next
145 of kin, or any interested person.

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146 (2) The petition by the guardian must contain all of the
147 following:

148 (a) A description of the proposed action for which court
149 approval is sought and documentation of any existing authority
150 for the guardian to make health care decisions for the ward.

151 (b) A statement regarding any known objections to the
152 proposed action or of conflicts between the guardian's proposed
153 action to withhold or withdraw life-prolonging procedures and
154 the wishes, presently or previously expressed, of the ward, the
155 ward's next of kin, or any interested person.

156 (c) A description of the circumstances or evidence and
157 affidavits or supporting documentation showing that the proposed
158 action satisfies the applicable criteria in s. 765.401 or s.
159 765.404.

160 (3) The guardian must serve notice of the petition, and of
161 any hearing, upon interested persons and the ward's next of kin,
162 unless waived by the court.

163 (4) The court must hold a hearing on the petition if the
164 court has been notified of an objection or conflict or if the
165 court has insufficient information to determine whether the
166 criteria for granting the requested authority has been met.

167 (5) If a hearing is required and exigent circumstances are
168 alleged, the court must hold a preliminary hearing within 72
169 hours after the petition is filed and do one of the following:

170 (a) Rule on the relief requested immediately after the
171 preliminary hearing.

172 (b) Conduct an evidentiary hearing within 4 days after the
173 preliminary hearing and rule on the relief requested immediately
174 after the evidentiary hearing.

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175 (6) Notwithstanding the requirements for court approval
176 imposed under this section, and if authority to withhold or
177 withdraw life-prolonging procedures has not been vested in
178 another person, the guardian may, without a hearing or prior
179 court approval, consent to the withholding or withdrawal of
180 life-prolonging procedures if all of the following apply:

181 (a) The ward is in a hospital and at least two of the
182 ward's treating physicians state in writing that there is a
183 substantial likelihood that the ward's death will occur within
184 the next 72 hours.

185 (b) There is no known objection to the granting of a
186 petition to withhold or withdraw life-prolonging procedures.

187 (c) The hospital ethics committee has met and agrees with
188 the guardian's proposal to withhold or withdraw life-prolonging
189 procedures. If the hospital does not have an ethics committee,
190 it may seek approval by the ethics committee of another facility
191 or a community-based ethics committee approved by the Florida
192 Bioethics Network.

193 Section 5. Section 744.441, Florida Statutes, is amended to
194 read:

195 744.441 Powers of guardian upon court approval.—After
196 obtaining approval of the court pursuant to a petition for
197 authorization to act,⁺

198 ~~(1)~~ a plenary guardian of the property, or a limited
199 guardian of the property within the powers granted by the order
200 appointing the guardian or an approved annual or amended
201 guardianship report, may do all of the following:

202 (1)~~(a)~~ Perform, compromise, or refuse performance of a
203 ward's contracts that continue as obligations of the estate, as

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204 he or she may determine under the circumstances.

205 (2)~~(b)~~ Execute, exercise, or release any powers as trustee,
206 personal representative, custodian for minors, conservator, or
207 donee of any power of appointment or other power that the ward
208 might have lawfully exercised, consummated, or executed if not
209 incapacitated, if the best interest of the ward requires such
210 execution, exercise, or release.

211 (3)~~(e)~~ Make ordinary or extraordinary repairs or
212 alterations in buildings or other structures; demolish any
213 improvements; or raze existing, or erect new, party walls or
214 buildings.

215 (4)~~(d)~~ Subdivide, develop, or dedicate land to public use;
216 make or obtain the vacation of plats and adjust boundaries;
217 adjust differences in valuation on exchange or partition by
218 giving or receiving consideration; or dedicate easements to
219 public use without consideration.

220 (5)~~(e)~~ Enter into a lease as lessor or lessee for any
221 purpose, with or without option to purchase or renew, for a term
222 within, or extending beyond, the period of guardianship.

223 (6)~~(f)~~ Enter into a lease or arrangement for exploration
224 and removal of minerals or other natural resources or enter into
225 a pooling or unitization agreement.

226 (7)~~(g)~~ Abandon property when, in the opinion of the
227 guardian, it is valueless or is so encumbered or in such
228 condition that it is of no benefit to the estate.

229 (8)~~(h)~~ Pay calls, assessments, and other sums chargeable or
230 accruing against, or on account of, securities.

231 (9)~~(i)~~ Borrow money, with or without security, to be repaid
232 from the property or otherwise and advance money for the

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233 protection of the estate.

234 (10)~~(j)~~ Effect a fair and reasonable compromise with any
235 debtor or obligor or extend, renew, or in any manner modify the
236 terms of any obligation owing to the estate.

237 (11)~~(k)~~ Prosecute or defend claims or proceedings in any
238 jurisdiction for the protection of the estate and of the
239 guardian in the performance of his or her duties. Before
240 authorizing a guardian to bring an action described in s.
241 736.0207, the court shall first find that the action appears to
242 be in the ward's best interests during the ward's probable
243 lifetime. There shall be a rebuttable presumption that an action
244 challenging the ward's revocation of all or part of a trust is
245 not in the ward's best interests if the revocation relates
246 solely to a devise. This subsection ~~paragraph~~ does not preclude
247 a challenge after the ward's death. If the court denies a
248 request that a guardian be authorized to bring an action
249 described in s. 736.0207, the court must ~~shall~~ review the
250 continued need for a guardian and the extent of the need for
251 delegation of the ward's rights.

252 (12)~~(l)~~ Sell, mortgage, or lease any real or personal
253 property of the estate, including homestead property, or any
254 interest therein for cash or credit, or for part cash and part
255 credit, and with or without security for unpaid balances.

256 (13)~~(m)~~ Continue any unincorporated business or venture in
257 which the ward was engaged.

258 (14)~~(n)~~ Purchase the entire fee simple title to real estate
259 in this state in which the guardian has no interest, but the
260 purchase may be made only for a home for the ward, to protect
261 the home of the ward or the ward's interest, or as a home for

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262 the ward's dependent family. If the ward is a married person and
263 the home of the ward or of the dependent family of the ward is
264 owned by the ward and spouse as an estate by the entirety and
265 the home is sold pursuant to the authority of subsection (12)
266 ~~paragraph (1)~~, the court may authorize the investment of any
267 part or all of the proceeds from the sale toward the purchase of
268 a fee simple title to real estate in this state for a home for
269 the ward or the dependent family of the ward as an estate by the
270 entirety owned by the ward and spouse. If the guardian is
271 authorized to acquire title to real estate for the ward or
272 dependent family of the ward as an estate by the entirety in
273 accordance with the preceding provisions, the conveyance must
274 ~~shall~~ be in the name of the ward and spouse and ~~shall~~ be
275 effective to create an estate by the entirety in the ward and
276 spouse.

277 (15) ~~(e)~~ Exercise any option contained in any policy of
278 insurance payable to, or inuring to the benefit of, the ward.

279 (16) ~~(e)~~ Pay reasonable funeral, interment, and grave marker
280 expenses for the ward from the ward's estate.

281 (17) ~~(e)~~ Make gifts of the ward's property to members of the
282 ward's family in estate and income tax planning procedures.

283 (18) ~~(e)~~ When the ward's will evinces an objective to obtain
284 a United States estate tax charitable deduction by use of a
285 split interest trust (as that term is defined in s. 736.1201),
286 but the maximum charitable deduction otherwise allowable will
287 not be achieved in whole or in part, execute a codicil on the
288 ward's behalf amending said will to obtain the maximum
289 charitable deduction allowable without diminishing the aggregate
290 value of the benefits of any beneficiary under such will.

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291 (19)~~(s)~~ Create or amend revocable trusts or create
292 irrevocable trusts of property of the ward's estate which may
293 extend beyond the disability or life of the ward in connection
294 with estate, gift, income, or other tax planning or in
295 connection with estate planning. The court shall retain
296 oversight of the assets transferred to a trust, unless otherwise
297 ordered by the court.

298 (20)~~(t)~~ Renounce or disclaim any interest by testate or
299 intestate succession or by inter vivos transfer.

300 (21)~~(u)~~ Enter into contracts that are appropriate for, and
301 in the best interest of, the ward.

302 (22)~~(v)~~ As to a minor ward, pay expenses of the ward's
303 support, health, maintenance, and education, if the ward's
304 parents, or either of them, are alive.

305 ~~(2) A plenary guardian or a limited guardian of a ward may
306 sign an order not to resuscitate as provided in s. 401.45(3).
307 When a plenary guardian or a limited guardian of a ward seeks to
308 obtain approval of the court to sign an order not to
309 resuscitate, if required by exigent circumstances, the court
310 must hold a preliminary hearing within 72 hours after the
311 petition is filed, and:~~

312 ~~(a) Rule on the relief requested immediately after the
313 preliminary hearing; or~~

314 ~~(b) Conduct an evidentiary hearing not later than 4 days
315 after the preliminary hearing and rule on the relief requested
316 immediately after the evidentiary hearing.~~

317 Section 6. This act shall take effect July 1, 2023.