

By the Committees on Children, Families, and Elder Affairs; and
Judiciary; and Senator Burton

586-02527-23

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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 a 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 that initial
9 and annual guardianship plans, respectively, 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 that such plans state the date of such
14 action; establishing certain authority without
15 additional court approval; requiring a guardian to
16 obtain court approval to exercise transferred power to
17 execute an order not to resuscitate or consent to
18 withhold or withdraw life-prolonging procedures under
19 certain circumstances; creating s. 744.4431, F.S.;
20 authorizing a guardian to petition a court for
21 approval to consent to withhold or withdraw life-
22 prolonging procedures under certain circumstances;
23 specifying requirements for the petition; requiring
24 the guardian to serve certain notices; specifying
25 procedures that must be followed by the court in
26 acting on the petition; authorizing the guardian to
27 withhold or withdraw life-prolonging procedures
28 without a hearing or court approval under certain
29 circumstances; amending s. 744.441, F.S.; making

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30 technical changes; deleting provisions regarding the
31 authority of certain guardians to sign an order not to
32 resuscitate; 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
44 court approval, if there are no valid advance directives as
45 defined in s. 765.101 and no valid alternatives to guardianship
46 that will sufficiently address the withholding or withdrawal of
47 life-prolonging procedures.

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

54 744.363 Initial guardianship plan.—

55 (1) The initial guardianship plan shall include all of the
56 following:

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

58 a. Orders not to resuscitate as described in ~~executed under~~

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59 s. 401.45(3) and the date such orders were signed; or

60 b. ~~Preexisting~~ Advance directives, as defined in s. 765.101
61 and, the date such directives were signed. ~~an order or directive~~
62 ~~was signed,~~

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

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

72 (2) A surrogate designated by the ward in an advance
73 directive or an agent designated by the ward in a durable power
74 of attorney who retains authority to make health care decisions
75 under the guardianship plan may exercise retained authority
76 without additional approval by the court. Any authority of the
77 surrogate to carry out the instructions in the advance directive
78 or any authority of the agent under a durable power of attorney
79 which is transferred to the guardian may be exercised by the
80 guardian, consistent with the advance directive or durable power
81 of attorney, without additional approval by the court. Any
82 authority transferred to the guardian to execute an order not to
83 resuscitate or to consent to withhold or withdraw life-
84 prolonging procedures is subject to court approval pursuant to
85 s. 744.4431 if there is a conflict over or objection to a
86 proposed exercise of that authority.

87 Section 3. Present subsections (2), (3), and (4) of section

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88 744.3675, Florida Statutes, are redesignated as subsections (3),
89 (4), and (5), respectively, paragraph (e) is added to subsection
90 (1) of that section, a new subsection (2) is added to that
91 section, and paragraph (d) of subsection (1) of that section is
92 amended, to read:

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

98 (1) Each plan for an adult ward must, if applicable,
99 include:

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

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

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

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

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

115 (2) A surrogate designated by the ward in an advance
116 directive or an agent designated by the ward in a durable power

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117 of attorney who retains authority to make health care decisions
118 under the guardianship plan may exercise retained authority
119 without additional approval by the court. Any authority of the
120 surrogate to carry out the instructions in the advance directive
121 or any authority of the agent under a durable power of attorney
122 which is transferred to the guardian may be exercised by the
123 guardian, consistent with the advance directive or durable power
124 of attorney, without additional approval by the court. Any
125 authority transferred to the guardian to execute an order not to
126 resuscitate or to consent to withhold or withdraw life-
127 prolonging procedures is subject to court approval pursuant to
128 s. 744.4431 if there is a conflict over or objection to a
129 proposed exercise of that authority.

130 Section 4. Section 744.4431, Florida Statutes, is created
131 to read:

132 744.4431 Guardianship power regarding life-prolonging
133 procedures.-

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

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

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

144 (c) The proposed withholding or withdrawal of life-
145 prolonging procedures is in conflict with the wishes, as

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146 presently or previously expressed, of the ward, the ward's next
147 of kin, or any interested person.

148 (2) The petition by the guardian must contain all of the
149 following:

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

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

158 (c) A description of the circumstances or evidence and
159 affidavits or supporting documentation showing that the proposed
160 action satisfies the applicable criteria in s. 765.401 or s.
161 765.404.

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

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

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

172 (a) Rule on the relief requested immediately after the
173 preliminary hearing.

174 (b) Conduct an evidentiary hearing within 4 days after the

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175 preliminary hearing and rule on the relief requested immediately
176 after the evidentiary hearing.

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

183 (a) The ward is in a hospital, and the ward's primary
184 physician and at least one other consulting physician document
185 that the ward's death is imminent.

186 (b) The guardian has notified known next of kin as to the
187 intent to withhold or withdraw life-prolonging procedures, and
188 there is no known objection to the withholding or withdrawing of
189 life-prolonging procedures by the ward, the next of kin, or any
190 other interested person.

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

197 Section 5. Section 744.441, Florida Statutes, is amended to
198 read:

199 744.441 Powers of guardian upon court approval.—After
200 obtaining approval of the court pursuant to a petition for
201 authorization to act, ~~÷~~

202 ~~(1)~~ a plenary guardian of the property, or a limited
203 guardian of the property within the powers granted by the order

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204 appointing the guardian or an approved annual or amended
205 guardianship report, may do all of the following:

206 (1)~~(a)~~ Perform, compromise, or refuse performance of a
207 ward's contracts that continue as obligations of the estate, as
208 he or she may determine under the circumstances.

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

215 (3)~~(c)~~ Make ordinary or extraordinary repairs or
216 alterations in buildings or other structures; demolish any
217 improvements; or raze existing, or erect new, party walls or
218 buildings.

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

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

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

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

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

235 (9)~~(i)~~ Borrow money, with or without security, to be repaid
236 from the property or otherwise and advance money for the
237 protection of the estate.

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

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

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

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

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262 (14)~~(n)~~ Purchase the entire fee simple title to real estate
263 in this state in which the guardian has no interest, but the
264 purchase may be made only for a home for the ward, to protect
265 the home of the ward or the ward's interest, or as a home for
266 the ward's dependent family. If the ward is a married person and
267 the home of the ward or of the dependent family of the ward is
268 owned by the ward and spouse as an estate by the entirety and
269 the home is sold pursuant to the authority of subsection (12)
270 ~~paragraph (1)~~, the court may authorize the investment of any
271 part or all of the proceeds from the sale toward the purchase of
272 a fee simple title to real estate in this state for a home for
273 the ward or the dependent family of the ward as an estate by the
274 entirety owned by the ward and spouse. If the guardian is
275 authorized to acquire title to real estate for the ward or
276 dependent family of the ward as an estate by the entirety in
277 accordance with the preceding provisions, the conveyance must
278 ~~shall~~ be in the name of the ward and spouse and ~~shall~~ be
279 effective to create an estate by the entirety in the ward and
280 spouse.

281 (15)~~(o)~~ Exercise any option contained in any policy of
282 insurance payable to, or inuring to the benefit of, the ward.

283 (16)~~(p)~~ Pay reasonable funeral, interment, and grave marker
284 expenses for the ward from the ward's estate.

285 (17)~~(q)~~ Make gifts of the ward's property to members of the
286 ward's family in estate and income tax planning procedures.

287 (18)~~(r)~~ When the ward's will evinces an objective to obtain
288 a United States estate tax charitable deduction by use of a
289 split interest trust (as that term is defined in s. 736.1201),
290 but the maximum charitable deduction otherwise allowable will

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291 not be achieved in whole or in part, execute a codicil on the
292 ward's behalf amending said will to obtain the maximum
293 charitable deduction allowable without diminishing the aggregate
294 value of the benefits of any beneficiary under such will.

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

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

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

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

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

316 ~~(a) Rule on the relief requested immediately after the~~
317 ~~preliminary hearing; or~~

318 ~~(b) Conduct an evidentiary hearing not later than 4 days~~
319 ~~after the preliminary hearing and rule on the relief requested~~

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320 ~~immediately after the evidentiary hearing.~~

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