

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Children, Families &
 2 Seniors Subcommittee
 3 Representative Berfield offered the following:
 4

Amendment (with title amendment)

Remove lines 36-192 and insert:

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

744.3215 Rights of persons determined incapacitated.—

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

(h) To consent to the withholding or withdrawal of life-prolonging procedures as defined in s. 765.101, subject to court approval as required by s. 744.4431.

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16 Section 2. Present subsections (2) through (6) of section
17 744.363, Florida Statutes, are redesignated as subsections (3)
18 through (7), respectively, paragraph (g) is added to subsection
19 (1) and a new subsection (2) is added to that section, and
20 paragraph (f) of subsection (1) of that section is amended, to
21 read:

22 744.363 Initial guardianship plan.—

23 (1) The initial guardianship plan shall include all of the
24 following:

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

26 a. Orders not to resuscitate executed in accordance with
27 under s. 401.45(3)(b) and the dates such orders were signed; or

28 b. ~~Preexisting~~ Advance directives, as defined in s.
29 765.101 and, the dates such directives were signed. ~~an order or~~
30 ~~directive was signed,~~

31 2. For each item listed under subparagraph 1., the plan
32 must state whether the such order or directive has been revoked,
33 modified, or suspended by the court or the extent to which
34 authority under an order or directive has been transferred by
35 the court to the guardian, and the date of such action by the
36 court.

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

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40 (2) A surrogate designated by the ward in an advance
41 directive or an agent designated by the ward in a durable power
42 of attorney who retains authority to make health care decisions
43 under the guardianship plan may exercise retained authority
44 without additional approval by the court. Any authority of the
45 surrogate to carry out the instructions in the advance directive
46 or authority of the agent under a durable power of attorney
47 which is transferred to the guardian may be exercised by the
48 guardian, consistent with the advance directive or durable power
49 of attorney, without additional approval by the court.

50 Section 3. Present subsections (2), (3), and (4) of
51 section 744.3675, Florida Statutes, are redesignated as
52 subsections (3), (4), and (5), respectively, paragraph (e) is
53 added to subsection (1) and a new subsection (2) is added to
54 that section, and paragraph (d) of subsection (1) of that
55 section is amended, to read:

56 744.3675 Annual guardianship plan.—Each guardian of the
57 person must file with the court an annual guardianship plan
58 which updates information about the condition of the ward. The
59 annual plan must specify the current needs of the ward and how
60 those needs are proposed to be met in the coming year.

61 (1) Each plan for an adult ward must, if applicable,
62 include:

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

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64 a. Orders not to resuscitate executed in accordance with
65 under s. 401.45(3) and the dates such orders were signed; or

66 b. ~~Preexisting~~ Advance directives, as defined in s.
67 765.101 and, the dates such directives were signed. ~~an order or~~
68 directive was signed,

69 2. For each item listed under subparagraph 1., the plan
70 must state whether the such order or directive has been revoked,
71 modified, or suspended by the court or the extent to which
72 authority under an order or directive has been transferred by
73 the court to the guardian, and the date of such action by the
74 court.

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

78 (2) A surrogate designated by the ward in an advance
79 directive or an agent designated by the ward in a durable power
80 of attorney who retains authority to make health care decisions
81 under the guardianship plan may exercise retained authority
82 without additional approval by the court. Any authority of the
83 surrogate to carry out the instructions in the advance directive
84 or authority of the agent under a durable power of attorney
85 which is transferred to the guardian may be exercised by the
86 guardian, consistent with the advance directive or durable power
87 of attorney, without additional approval by the court.

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88 Section 4. Section 744.4431, Florida Statutes, is created
89 to read:

90 744.4431 Guardianship power regarding life-prolonging
91 procedures.-

92 (1) Except as provided in this section, decisions to
93 withdraw or withhold life-prolonging procedures for a ward must
94 be approved by the court. A guardian of a ward's person shall
95 petition a court pursuant to the Florida Probate Rules for
96 authority to consent to withhold or withdraw life-prolonging
97 procedures.

98 (2) The petition by the guardian must contain all of the
99 following:

100 (a) A description of the proposed action for which court
101 approval is sought and documentation of any authority for the
102 guardian to make health care decisions for the ward.

103 (b) Documentation showing the guardian has notified the
104 ward's known next of kin and interested persons of the intent to
105 file the petition.

106 (c) A statement regarding any known objections to the
107 proposed action or of conflicts between the 'proposed decision
108 and the wishes, presently or previously expressed, of the ward,
109 the ward's next of kin, or any interested person.

110 (d) A description of the circumstances or evidence and
111 affidavits or supporting documentation showing that the proposed

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112 decision satisfies the criteria in s. 765.305 or s. 765.401(3),
113 or s. 765.404, as applicable.

114 (3) The guardian must serve notice of the petition, and of
115 any hearing, upon interested persons and the ward's next of kin.

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

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

123 (a) Rule on the relief requested immediately after the
124 preliminary hearing.

125 (b) Conduct an evidentiary hearing within 4 days after the
126 preliminary hearing and rule on the relief requested immediately
127 after the evidentiary hearing.

128 (6) If the decision to withdraw or withhold life-
129 prolonging procedures involves no known conflicts with the
130 wishes, as presently or previously expressed, of the ward, the
131 ward's next of kin, or any interested person, then court
132 authority is not required for the following decisions.

133 (a) For a decision by surrogate designated by the ward in
134 an advance directive, or by an agent designated by the ward in a
135 durable power of attorney, who retains authority to make health
136 care decisions under the guardianship plan.

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137 (b) For a decision by a surrogate designated by the ward
138 in an advance directive or by an agent designated by the ward in
139 a durable power of attorney, who retains authority to make
140 health care decisions under the guardianship plan, to carry out
141 the instructions in, or take actions consistent with, an advance
142 directive.

143 (c) For a decision by a guardian to carry out the
144 instructions in advance directive, or take actions consistent
145 with an advance directive, which authority has been transferred
146 to the guardian by the court.

147 (3) Court authority is not required for a decision to
148 execute an order not to resuscitate, as described in s.
149 401.45(3) (a), if the ward is in a hospital and:

150 (a) The ward's primary physician and at least one other
151 consulting physician document that:

152 1. There is no reasonable medical probability for recovery
153 or cure of the underlying medical condition;

154 2. The ward is in an end-stage condition, or that the
155 ward's medical condition is in an inexorable and irreversible
156 decline and death likely to occur in the near future;

157 3. That resuscitation will cause the patient physical harm
158 or pain;

159 (b) The guardian has notified known next of kin and
160 interested persons and the decision involves no known conflicts

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161 with the wishes, as presently or previously expressed, of the
162 ward, the ward's next of kin, or any interested person.

163
164 The guardian must notify the court of the execution of an order
165 not to resuscitate within two business days of execution.

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168 **T I T L E A M E N D M E N T**

169 Remove lines 2-28 and insert:

170 An act relating to withholding or withdrawal of life-prolonging
171 procedures; amending s. 744.3215, F.S.; authorizing the court to
172 delegate the right to consent to the withholding or withdrawal
173 of life-prolonging procedures of incapacitated persons in
174 certain circumstances; amending ss. 744.363 and 744.3675, F.S.;
175 making technical changes; requiring initial and annual
176 guardianship plans, respectively, to state whether any power
177 under the ward's preexisting order not to resuscitate or advance
178 directive is revoked, modified, suspended, or transferred to the
179 guardian; requiring such plans to state the date of such action;
180 establishing certain authority without additional court
181 approval; creating s. 744.4431, F.S.; requiring court approval
182 for decisions to withhold or withdraw life-prolonging
183 procedures; specifying requirements for a petition for court
184 approval; requiring the guardian to serve certain notices;
185 specifying procedures that must be followed by the court in

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186 acting on the petition; providing exceptions to the court
187 approval requirement; requiring a certain notice to the court;
188 amending s.