

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

58 b. ~~Preexisting~~ Advance directives, ~~as defined in s.~~  
59 ~~765.101 and,~~ the date such directives were signed. ~~an order or~~  
60 ~~directive 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  
 86 section 744.3675, Florida Statutes, are redesignated as  
 87 subsections (3), (4), and (5), respectively, paragraph (e) is  
 88 added to subsection (1) and a new subsection (2) is added to  
 89 that section, and paragraph (d) of subsection (1) of that  
 90 section is amended, to 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  
 100 under s. 401.45(3) and the date such orders were signed; or

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

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.

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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.

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  
194 to 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

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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  
204 he or she may determine under the circumstances.

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

211 (3)~~(c)~~ 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  
 230 or accruing against, or on account of, securities.

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

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251 delegation of the ward's rights.

252 (12)~~(1)~~ 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  
259 estate in this state in which the guardian has no interest, but  
260 the purchase may be made only for a home for the ward, to  
261 protect the home of the ward or the ward's interest, or as a  
262 home for the ward's dependent family. If the ward is a married  
263 person and the home of the ward or of the dependent family of  
264 the ward is owned by the ward and spouse as an estate by the  
265 entirety and the home is sold pursuant to the authority of  
266 subsection (12) ~~paragraph (1)~~, the court may authorize the  
267 investment of any part or all of the proceeds from the sale  
268 toward the purchase of a fee simple title to real estate in this  
269 state for a home for the ward or the dependent family of the  
270 ward as an estate by the entirety owned by the ward and spouse.  
271 If the guardian is authorized to acquire title to real estate  
272 for the ward or dependent family of the ward as an estate by the  
273 entirety in accordance with the preceding provisions, the  
274 conveyance must ~~shall~~ be in the name of the ward and spouse and  
275 ~~shall~~ be effective to create an estate by the entirety in the

276 ward and spouse.

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

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

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

283 (18)~~(r)~~ When the ward's will evinces an objective to  
 284 obtain a United States estate tax charitable deduction by use of  
 285 a 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.

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

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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.