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1
 2 An act relating to withholding or withdrawal of life-
 3 prolonging procedures; amending s. 744.3115, F.S.;
 4 revising when a court may modify or revoke certain
 5 authority of a surrogate; requiring a hearing before
 6 the court can modify or revoke authority of a
 7 surrogate; requiring a guardian to file an advance
 8 directive for health care with the court within a
 9 specified timeframe under certain circumstances;
 10 requiring the court to make certain findings;
 11 authorizing a surrogate or agent to make health care
 12 decisions without order of the court under certain
 13 circumstances; amending s. 744.3215, F.S.; revising
 14 the rights that may be removed from a person by an
 15 order determining incapacity; requiring court approval
 16 to withhold or withdraw life-prolonging procedures of
 17 incapacitated persons in certain circumstances;
 18 amending ss. 744.363 and 744.3675, F.S.; making
 19 technical changes; requiring initial and annual
 20 guardianship plans, respectively, to state whether any
 21 power under the ward's preexisting order not to
 22 resuscitate or advance directive is revoked, modified,
 23 or suspended; requiring such plans to state the dates
 24 of such action; creating s. 744.4431, F.S.; requiring
 25 court approval for decisions to withhold or withdraw

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26 | life-prolonging procedures or to execute an order not
 27 | to resuscitate; specifying requirements for a petition
 28 | for court approval to consent to withhold or withdraw
 29 | life-prolonging procedures or to execute an order not
 30 | to resuscitate; requiring the professional guardian to
 31 | prove certain facts by clear and convincing evidence;
 32 | requiring the professional guardian to serve certain
 33 | notices; requiring the court to hold a hearing if
 34 | certain circumstances exist; specifying procedures
 35 | that must be followed by the court in acting on the
 36 | petition; providing exceptions to the requirement for
 37 | court approval; requiring the professional guardian to
 38 | provide certain written notice to the court within a
 39 | specified timeframe; amending s. 744.441, F.S.; making
 40 | technical changes; deleting provisions regarding the
 41 | authority of certain guardians to sign an order not to
 42 | resuscitate; providing an effective date.

43 |
 44 | Be It Enacted by the Legislature of the State of Florida:

45 |
 46 | Section 1. Section 744.3115, Florida Statutes, is amended
 47 | to read:

48 | 744.3115 Advance directives for health care.—In each
 49 | proceeding in which a guardian is appointed under this chapter,
 50 | the court shall determine whether the ward, prior to incapacity,

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51 | has executed any valid advance directive under chapter 765.

52 | (1) For purposes of this section, the term "health care
 53 | decision" has the same meaning as in s. 765.101.

54 | (2) If any advance directive exists, the court shall
 55 | specify in its order and letters of guardianship what authority,
 56 | if any, the guardian shall exercise over the ward with regard to
 57 | health care decisions and what authority, if any, the surrogate
 58 | shall continue to exercise over the ward with regard to health
 59 | care decisions.

60 | (3) Pursuant to the grounds listed in s. 765.105, or if
 61 | the surrogate is unwilling or unable to act, the court may, upon
 62 | motion from any interested person or upon its own motion, may,
 63 | with notice to the surrogate; next of kin, if known; and any
 64 | other interested persons as the court may direct appropriate
 65 | parties, modify, or revoke the authority of the surrogate to
 66 | make health care decisions for the ward. Any order revoking or
 67 | modifying the authority of the surrogate must be supported by
 68 | specific written findings of fact after a hearing on the motion.

69 | (4) If a ~~the~~ court order provides that a ~~the~~ guardian is
 70 | responsible for making health care decisions for the ward, the
 71 | guardian shall assume the responsibilities of the surrogate
 72 | which are provided in s. 765.205. ~~For purposes of this section,~~
 73 | ~~the term "health care decision" has the same meaning as in s.~~
 74 | ~~765.101.~~

75 | (5) If a guardian discovers an advance directive for

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76 health care for the ward after the guardian is appointed, the
 77 guardian must file the advance directive with the court as soon
 78 after its discovery as is reasonable, but no later than the due
 79 date for the initial guardianship report or the annual
 80 guardianship plan or the filing date for a petition seeking to
 81 exercise authority regarding life-prolonging procedures in
 82 compliance with s. 744.4431, whichever is earlier. After the
 83 guardian files an advance directive for health care, the court
 84 must determine if the advance directive is an alternative to
 85 guardianship and what authority, if any, the guardian will
 86 exercise over health care decisions for the ward pursuant to
 87 subsections (3) and (4).

88 (6) Upon a finding by the court that a health care
 89 surrogate designation or a durable power of attorney is an
 90 alternative to guardianship for health care decisions, the
 91 surrogate or agent may exercise the right to make health care
 92 decisions for the ward under the applicable advance directive or
 93 durable power of attorney without order of the court even if the
 94 surrogate or agent has been appointed as guardian of the ward
 95 for other delegable rights.

96 Section 2. Paragraph (f) of subsection (3) of section
 97 744.3215, Florida Statutes, is amended to read:

98 744.3215 Rights of persons determined incapacitated.—

99 (3) Rights that may be removed from a person by an order
 100 determining incapacity and which may be delegated to the

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101 guardian include the right:

102 (f) To make health care decisions as defined in s.
 103 765.101. If this right is removed from a person, then court
 104 approval for the withdrawal or withholding of life-prolonging
 105 procedures, as defined in s. 765.101, is required under s.
 106 744.4431 ~~consent to medical and mental health treatment.~~

107 Section 3. Paragraph (f) of subsection (1) of section
 108 744.363, Florida Statutes, is amended, and paragraph (g) is
 109 added to that subsection, to read:

110 744.363 Initial guardianship plan.—

111 (1) The initial guardianship plan shall include all of the
 112 following:

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

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

116 b. ~~Preexisting~~ Advance directives, as defined in s.
 117 765.101 and, the dates such directives were signed. ~~date an~~
 118 ~~order or directive was signed,~~

119 2. For each item listed under subparagraph 1., the plan
 120 must state whether the ~~such~~ order or directive has been revoked,
 121 modified, or suspended by the court.

122 (g) ~~and~~ A description of the steps taken to identify and
 123 locate a ~~the~~ preexisting order not to resuscitate or advance
 124 directive.

125 Section 4. Paragraph (d) of subsection (1) of section

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126 744.3675, Florida Statutes, is amended, and paragraph (e) is
 127 added to that subsection, to read:

128 744.3675 Annual guardianship plan.—Each guardian of the
 129 person must file with the court an annual guardianship plan
 130 which updates information about the condition of the ward. The
 131 annual plan must specify the current needs of the ward and how
 132 those needs are proposed to be met in the coming year.

133 (1) Each plan for an adult ward must, if applicable,
 134 include:

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

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

138 b. ~~Preexisting~~ Advance directives, as defined in s.
 139 765.101 and, the dates such directives were signed. ~~date an~~
 140 ~~order or directive was signed,~~

141 2. For each item listed under subparagraph 1., the plan
 142 must state whether the such order or directive has been revoked,
 143 modified, or suspended by the court.

144 (e) ~~and~~ A description of the steps taken to identify and
 145 locate a ~~the~~ preexisting order not to resuscitate or advance
 146 directive.

147 Section 5. Section 744.4431, Florida Statutes, is created
 148 to read:

149 744.4431 Guardianship power regarding life-prolonging
 150 procedures.—

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151 (1) Except as provided in this section, decisions by a
 152 professional guardian, as defined in s. 744.102, to withhold or
 153 withdraw life-prolonging procedures from, or to execute an order
 154 not to resuscitate for, a ward must be approved by the court. A
 155 professional guardian appointed to act on behalf of a ward's
 156 person must petition the court pursuant to the Florida Probate
 157 Rules for authority to consent to withhold or withdraw life-
 158 prolonging procedures or to execute an order not to resuscitate
 159 before taking such action, except as provided in subsection (7).

160 (2) The petition by a professional guardian must contain
 161 all of the following:

162 (a) A description of the proposed action or decision for
 163 which court approval is sought and documentation of the
 164 authority of the professional guardian to make health care
 165 decisions on behalf of the ward.

166 (b) A statement regarding any known objections to the
 167 relief sought in the petition.

168 (c) A description of the ward's known wishes, including
 169 all advance directives executed by the ward, or, if there is no
 170 indication of the ward's wishes, a description of why the relief
 171 sought is in the best interests of the ward.

172 (d) Any exigent circumstances that exist which necessitate
 173 immediate relief.

174 (e) A description of the circumstances requiring the
 175 proposed action or decision and evidence, including affidavits,

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176 medical records, or other supporting documentation, showing that
177 the proposed action or decision satisfies the criteria in s.
178 765.305, s. 765.401(3), or s. 765.404, as applicable.

179 (3) A professional guardian must show by clear and
180 convincing evidence that the proposed action or decision he or
181 she is requesting would have been the decision the ward would
182 have chosen if the ward had capacity or, if there is no
183 indication of what the ward would have chosen, that the proposed
184 action or decision is in the best interests of the ward.

185 (4) A professional guardian must serve notice of the
186 petition, and of any hearing, on the ward; the ward's attorney,
187 if any; the ward's next of kin, if known; and any other
188 interested persons as the court may direct, unless such
189 requirement is waived by the court.

190 (5) The court must hold a hearing on the petition if:

191 (a) The ward or the ward's attorney objects to the
192 petition;

193 (b) The ward's next of kin or an interested person objects
194 on any basis under s. 765.105(1);

195 (c) The professional guardian, the ward, or the ward's
196 attorney requests a hearing; or

197 (d) The court has insufficient information to determine
198 whether the criteria for granting the petition has been met.

199 (6) If a hearing is required and exigent circumstances are
200 alleged, the court must hold a preliminary hearing within 72

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201 hours after the petition is filed and do one of the following:

202 (a) Rule on the relief requested immediately after the
 203 preliminary hearing; or

204 (b) Conduct an evidentiary hearing within 4 days after the
 205 preliminary hearing and rule on the relief requested immediately
 206 after the evidentiary hearing.

207 (7) Court approval is not required for the following
 208 decisions:

209 (a) A decision to withhold or withdraw life-prolonging
 210 procedures made by a professional guardian to whom authority has
 211 been granted by the court under s. 744.3115 to carry out the
 212 instructions in or to take actions consistent with the ward's
 213 advance directive, as long as there are no known objections from
 214 the ward; the ward's attorney; the ward's next of kin, if known;
 215 and any other interested persons as the court may direct based
 216 on s. 765.105(1).

217 (b) A decision by a professional guardian who has been
 218 delegated health care decision-making authority to execute an
 219 order not to resuscitate, as described in s. 401.45(3)(a), if
 220 the ward is in a hospital and the following conditions are met:

221 1. The ward's primary treating physician and at least one
 222 other consulting physician document in the ward's medical record
 223 that:

224 a. There is no reasonable medical probability for recovery
 225 from or a cure of the ward's underlying medical condition;

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226 b. The ward is in an end-stage condition, a terminal
 227 condition, or a persistent vegetative state as those terms are
 228 defined in s. 765.101, and that the ward's death is imminent;
 229 and

230 c. Resuscitation will cause the ward physical harm or
 231 additional pain.

232 2. The professional guardian has notified the ward's next
 233 of kin, if known, and any interested persons as the court may
 234 direct and the decision is not contrary to the ward's expressed
 235 wishes and there are no known objections from the ward; the
 236 ward's attorney; the ward's next of kin, if known; or any other
 237 interested persons as the court may direct on the basis of s.
 238 765.105(1).

239 (8) Within 2 business days after executing an order not to
 240 resuscitate under paragraph (7)(b), a professional guardian must
 241 notify the court in writing of all of the following:

242 (a) The date the order not to resuscitate was executed.

243 (b) The location of the ward when the order not to
 244 resuscitate was executed.

245 (c) The names of the physicians who documented the ward's
 246 condition in the ward's medical record.

247 Section 6. Section 744.441, Florida Statutes, is amended
 248 to read:

249 744.441 Powers of guardian upon court approval.—After
 250 obtaining approval of the court pursuant to a petition for

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251 authorization to act,÷

252 ~~(1)~~ a plenary guardian of the property, or a limited
 253 guardian of the property within the powers granted by the order
 254 appointing the guardian or an approved annual or amended
 255 guardianship report, may do all of the following:

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

259 (2)~~(b)~~ Execute, exercise, or release any powers as
 260 trustee, personal representative, custodian for minors,
 261 conservator, or donee of any power of appointment or other power
 262 that the ward might have lawfully exercised, consummated, or
 263 executed if not incapacitated, if the best interest of the ward
 264 requires such execution, exercise, or release.

265 (3)~~(c)~~ Make ordinary or extraordinary repairs or
 266 alterations in buildings or other structures; demolish any
 267 improvements; or raze existing, or erect new, party walls or
 268 buildings.

269 (4)~~(d)~~ Subdivide, develop, or dedicate land to public use;
 270 make or obtain the vacation of plats and adjust boundaries;
 271 adjust differences in valuation on exchange or partition by
 272 giving or receiving consideration; or dedicate easements to
 273 public use without consideration.

274 (5)~~(e)~~ Enter into a lease as lessor or lessee for any
 275 purpose, with or without option to purchase or renew, for a term

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276 within, or extending beyond, the period of guardianship.
 277 (6)~~(f)~~ Enter into a lease or arrangement for exploration
 278 and removal of minerals or other natural resources or enter into
 279 a pooling or unitization agreement.
 280 (7)~~(g)~~ Abandon property when, in the opinion of the
 281 guardian, it is valueless or is so encumbered or in such
 282 condition that it is of no benefit to the estate.
 283 (8)~~(h)~~ Pay calls, assessments, and other sums chargeable
 284 or accruing against, or on account of, securities.
 285 (9)~~(i)~~ Borrow money, with or without security, to be
 286 repaid from the property or otherwise and advance money for the
 287 protection of the estate.
 288 (10)~~(j)~~ Effect a fair and reasonable compromise with any
 289 debtor or obligor or extend, renew, or in any manner modify the
 290 terms of any obligation owing to the estate.
 291 (11)~~(k)~~ Prosecute or defend claims or proceedings in any
 292 jurisdiction for the protection of the estate and of the
 293 guardian in the performance of his or her duties. Before
 294 authorizing a guardian to bring an action described in s.
 295 736.0207, the court shall first find that the action appears to
 296 be in the ward's best interests during the ward's probable
 297 lifetime. There shall be a rebuttable presumption that an action
 298 challenging the ward's revocation of all or part of a trust is
 299 not in the ward's best interests if the revocation relates
 300 solely to a devise. This subsection ~~paragraph~~ does not preclude

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301 a challenge after the ward's death. If the court denies a
 302 request that a guardian be authorized to bring an action
 303 described in s. 736.0207, the court must ~~shall~~ review the
 304 continued need for a guardian and the extent of the need for
 305 delegation of the ward's rights.

306 (12) ~~(1)~~ Sell, mortgage, or lease any real or personal
 307 property of the estate, including homestead property, or any
 308 interest therein for cash or credit, or for part cash and part
 309 credit, and with or without security for unpaid balances.

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

312 (14) ~~(n)~~ Purchase the entire fee simple title to real
 313 estate in this state in which the guardian has no interest, but
 314 the purchase may be made only for a home for the ward, to
 315 protect the home of the ward or the ward's interest, or as a
 316 home for the ward's dependent family. If the ward is a married
 317 person and the home of the ward or of the dependent family of
 318 the ward is owned by the ward and spouse as an estate by the
 319 entirety and the home is sold pursuant to the authority of
 320 subsection (12) paragraph (1), the court may authorize the
 321 investment of any part or all of the proceeds from the sale
 322 toward the purchase of a fee simple title to real estate in this
 323 state for a home for the ward or the dependent family of the
 324 ward as an estate by the entirety owned by the ward and spouse.
 325 If the guardian is authorized to acquire title to real estate

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326 | for the ward or dependent family of the ward as an estate by the
 327 | entirety in accordance with the preceding provisions, the
 328 | conveyance must ~~shall~~ be in the name of the ward and spouse and
 329 | ~~shall~~ be effective to create an estate by the entirety in the
 330 | ward and spouse.

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

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

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

337 | (18) ~~(r)~~ When the ward's will evinces an objective to
 338 | obtain a United States estate tax charitable deduction by use of
 339 | a split interest trust (as that term is defined in s. 736.1201),
 340 | but the maximum charitable deduction otherwise allowable will
 341 | not be achieved in whole or in part, execute a codicil on the
 342 | ward's behalf amending said will to obtain the maximum
 343 | charitable deduction allowable without diminishing the aggregate
 344 | value of the benefits of any beneficiary under such will.

345 | (19) ~~(s)~~ Create or amend revocable trusts or create
 346 | irrevocable trusts of property of the ward's estate which may
 347 | extend beyond the disability or life of the ward in connection
 348 | with estate, gift, income, or other tax planning or in
 349 | connection with estate planning. The court shall retain
 350 | oversight of the assets transferred to a trust, unless otherwise

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351 | ordered by the court.

352 | (20)~~(t)~~ Renounce or disclaim any interest by testate or
353 | intestate succession or by inter vivos transfer.

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

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

359 | ~~(2) A plenary guardian or a limited guardian of a ward may
360 | sign an order not to resuscitate as provided in s. 401.45(3).
361 | When a plenary guardian or a limited guardian of a ward seeks to
362 | obtain approval of the court to sign an order not to
363 | resuscitate, if required by exigent circumstances, the court
364 | must hold a preliminary hearing within 72 hours after the
365 | petition is filed, and:~~

366 | ~~(a) Rule on the relief requested immediately after the
367 | preliminary hearing; or~~

368 | ~~(b) Conduct an evidentiary hearing not later than 4 days
369 | after the preliminary hearing and rule on the relief requested
370 | immediately after the evidentiary hearing.~~

371 | Section 7. This act shall take effect July 1, 2023.