

By the Committee on Children, Families, and Elder Affairs; and
Senator Passidomo

586-01711-17

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1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.331,
3 F.S.; requiring each examining committee member in a
4 proceeding to determine incapacity to file his or her
5 report with the clerk of the court within a specified
6 timeframe after appointment; requiring the clerk of
7 the court to serve each report on specified persons
8 within a specified timeframe; requiring the clerk of
9 the court to file a certificate of service of each
10 report in the incapacity proceeding; revising the
11 timeframe before the hearing on the petition within
12 which specified parties must be served with all
13 reports; authorizing the petitioner and the alleged
14 incapacitated person to move for a continuance if
15 service is not timely effectuated and to object to the
16 introduction of all or any part of a report by filing
17 and serving a written objection to admissibility on
18 the other party within a specified timeframe;
19 specifying that the admissibility of the report is
20 governed by the rules of evidence; requiring that the
21 adjudicatory hearing be conducted within a specified
22 timeframe after the filing of the last filed report;
23 amending s. 744.367, F.S.; increasing the time that a
24 guardian has to file a required annual guardianship
25 plan with the court if the court does not require
26 filing on a calendar year basis; decreasing the time
27 that a guardian has to file a required annual
28 guardianship plan with the court if the court requires
29 calendar-year filing; amending s. 744.3725, F.S.;
30 eliminating the requirement that a court must first
31 find that a ward's spouse has consented to dissolution

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32 of marriage before the court may authorize a guardian
33 to exercise specified rights; amending s. 744.441,
34 F.S.; removing the cap on funeral expenses that may be
35 paid from a ward's estate; reenacting s. 744.3215(4),
36 F.S., relating to the rights of persons determined
37 incapacitated, to incorporate the amendment made to s.
38 744.3725, F.S., in a reference thereto; providing an
39 effective date.

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41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Paragraphs (e) and (h) of subsection (3) and
44 paragraph (a) of subsection (5) of section 744.331, Florida
45 Statutes, are amended, and paragraph (i) is added to subsection
46 (3) of that section, to read:

47 744.331 Procedures to determine incapacity.—

48 (3) EXAMINING COMMITTEE.—

49 (e) Each member of the examining committee shall examine
50 the person. Each examining committee member must determine the
51 alleged incapacitated person's ability to exercise those rights
52 specified in s. 744.3215. In addition to the examination, each
53 examining committee member must have access to, and may
54 consider, previous examinations of the person, including, but
55 not limited to, habilitation plans, school records, and
56 psychological and psychosocial reports voluntarily offered for
57 use by the alleged incapacitated person. Each member of the
58 examining committee must file his or her report with the clerk
59 of the court ~~submit a report~~ within 15 days after appointment.

60 (h) Within 3 days after receipt of each examining committee

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61 member's report, the clerk shall serve the report on the
62 petitioner's counsel and the attorney for the alleged
63 incapacitated person, by electronic mail delivery or U.S. mail,
64 and, upon service, shall file a certificate of service in the
65 incapacity proceeding. The petitioner's counsel and the attorney
66 for the alleged incapacitated person must be served with all
67 reports at least 10 days before the hearing on the petition. If
68 such service is not timely effectuated, the petitioner or the
69 alleged incapacitated person may move for a continuance of the
70 hearing ~~A copy of each committee member's report must be served~~
71 ~~on the petitioner and on the attorney for the alleged~~
72 ~~incapacitated person within 3 days after the report is filed and~~
73 ~~at least 5 days before the hearing on the petition.~~

74 (i) The petitioner and the alleged incapacitated person may
75 object to the introduction into evidence of all or any portion
76 of the examining committee members' reports by filing and
77 -serving a written objection on the other party no later than 5
78 days before the adjudicatory hearing. The objection must state
79 the basis upon which the challenge to admissibility is made. If
80 an objection is timely filed and served, the court shall apply
81 the rules of evidence in determining the reports' admissibility.
82 For good cause shown, the court may extend the time to file and
83 serve the written objection. Only the alleged incapacitated
84 person and the petitioner are entitled to object to the
85 admissibility of the reports, unless the court provides
86 otherwise.

87 (5) ADJUDICATORY HEARING.—

88 (a) Upon appointment of the examining committee, the court
89 shall set the date upon which the petition will be heard. The

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90 ~~date for the~~ adjudicatory hearing must be conducted at least 10
91 days, but no more than 30 days, after the filing of the last
92 filed report of the examining committee members ~~set no more than~~
93 ~~14 days after the filing of the reports of the examining~~
94 ~~committee members,~~ unless good cause is shown. The adjudicatory
95 hearing must be conducted at the time and place specified in the
96 notice of hearing and in a manner consistent with due process.

97 Section 2. Subsection (1) of section 744.367, Florida
98 Statutes, is amended to read:

99 744.367 Duty to file annual guardianship report.—

100 (1) Unless the court requires filing on a calendar-year
101 basis, each guardian of the person shall file with the court an
102 annual guardianship plan within 90 days after ~~at least 60 days,~~
103 ~~but no more than 90 days,~~ before the last day of the anniversary
104 month that the letters of guardianship were signed, and the plan
105 must cover the coming fiscal year, ending on the last day in
106 such anniversary month. If the court requires calendar-year
107 filing, the guardianship plan ~~for the forthcoming calendar year~~
108 must be filed on or before April 1 of each year. The latest
109 annual guardianship plan approved by the court will remain in
110 effect until the court approves a subsequent plan ~~after~~
111 ~~September 1 but no later than December 1 of the current year.~~

112 Section 3. Section 744.3725, Florida Statutes, is amended
113 to read:

114 744.3725 Procedure for extraordinary authority.—Before the
115 court may grant authority to a guardian to exercise any of the
116 rights specified in s. 744.3215(4), the court must:

117 (1) Appoint an independent attorney to act on the
118 incapacitated person's behalf, and the attorney must have the

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119 opportunity to meet with the person and to present evidence and
120 cross-examine witnesses at any hearing on the petition for
121 authority to act;

122 (2) Receive as evidence independent medical, psychological,
123 and social evaluations with respect to the incapacitated person
124 by competent professionals or appoint its own experts to assist
125 in the evaluations;

126 (3) Personally meet with the incapacitated person to obtain
127 its own impression of the person's capacity, so as to afford the
128 incapacitated person the full opportunity to express his or her
129 personal views or desires with respect to the judicial
130 proceeding and issue before the court;

131 (4) Find by clear and convincing evidence that the person
132 lacks the capacity to make a decision about the issue before the
133 court and that the incapacitated person's capacity is not likely
134 to change in the foreseeable future; and

135 (5) Be persuaded by clear and convincing evidence that the
136 authority being requested is in the best interests of the
137 incapacitated person. ; ~~and~~

138 ~~(6) In the case of dissolution of marriage, find that the~~
139 ~~ward's spouse has consented to the dissolution.~~

140

141 The provisions of this section and s. 744.3215(4) are procedural
142 and do not establish any new or independent right to or
143 authority over the termination of parental rights, dissolution
144 of marriage, sterilization, abortion, or the termination of life
145 support systems.

146 Section 4. Subsection (16) of section 744.441, Florida
147 Statutes, is amended to read:

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148 744.441 Powers of guardian upon court approval.—After
149 obtaining approval of the court pursuant to a petition for
150 authorization to act, a plenary guardian of the property, or a
151 limited guardian of the property within the powers granted by
152 the order appointing the guardian or an approved annual or
153 amended guardianship report, may:

154 (16) Pay reasonable funeral, interment, and grave marker
155 expenses for the ward from the ward's estate, ~~up to a maximum of~~
156 ~~\$6,000.~~

157 Section 5. For the purpose of incorporating the amendment
158 made by this act to section 744.3725, Florida Statutes, in a
159 reference thereto, subsection (4) of section 744.3215, Florida
160 Statutes, is reenacted to read:

161 744.3215 Rights of persons determined incapacitated.—

162 (4) Without first obtaining specific authority from the
163 court, as described in s. 744.3725, a guardian may not:

164 (a) Commit the ward to a facility, institution, or licensed
165 service provider without formal placement proceeding, pursuant
166 to chapter 393, chapter 394, or chapter 397.

167 (b) Consent on behalf of the ward to the performance on the
168 ward of any experimental biomedical or behavioral procedure or
169 to the participation by the ward in any biomedical or behavioral
170 experiment. The court may permit such performance or
171 participation only if:

172 1. It is of direct benefit to, and is intended to preserve
173 the life of or prevent serious impairment to the mental or
174 physical health of the ward; or

175 2. It is intended to assist the ward to develop or regain
176 his or her abilities.

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177 (c) Initiate a petition for dissolution of marriage for the
178 ward.

179 (d) Consent on behalf of the ward to termination of the
180 ward's parental rights.

181 (e) Consent on behalf of the ward to the performance of a
182 sterilization or abortion procedure on the ward.

183 Section 6. This act shall take effect July 1, 2017.