

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. 744.3725, F.S.; eliminating the
24 requirement that a court must first find that a ward's
25 spouse has consented to dissolution of marriage before

26 | the court may authorize a guardian to exercise
27 | specified rights; amending s. 744.441, F.S.; removing
28 | the cap on funeral expenses that may be paid from a
29 | ward's estate; reenacting s. 744.3215(4), F.S.,
30 | relating to the rights of persons determined
31 | incapacitated, to incorporate the amendment made to s.
32 | 744.3725, F.S., in a reference thereto; providing an
33 | effective date.

34 |
35 | Be It Enacted by the Legislature of the State of Florida:

36 |
37 | Section 1. Paragraphs (e) and (h) of subsection (3) and
38 | paragraph (a) of subsection (5) of section 744.331, Florida
39 | Statutes, are amended, and paragraph (i) is added to subsection
40 | (3) of that section, to read:

41 | 744.331 Procedures to determine incapacity.—

42 | (3) EXAMINING COMMITTEE.—

43 | (e) Each member of the examining committee shall examine
44 | the person. Each examining committee member must determine the
45 | alleged incapacitated person's ability to exercise those rights
46 | specified in s. 744.3215. In addition to the examination, each
47 | examining committee member must have access to, and may
48 | consider, previous examinations of the person, including, but
49 | not limited to, habilitation plans, school records, and
50 | psychological and psychosocial reports voluntarily offered for

51 use by the alleged incapacitated person. Each member of the
52 examining committee must file his or her report with the clerk
53 of the court ~~submit a report~~ within 15 days after appointment.

54 (h) Within 3 days after receipt of each examining
55 committee member's report, the clerk shall serve the report on
56 the petitioner's counsel and the attorney for the alleged
57 incapacitated person, by electronic mail delivery or U.S. mail,
58 and, upon service, shall file a certificate of service in the
59 incapacity proceeding. The petitioner's counsel and the attorney
60 for the alleged incapacitated person must be served with all
61 reports at least 10 days before the hearing on the petition. If
62 such service is not timely effectuated, the petitioner or the
63 alleged incapacitated person may move for a continuance of the
64 hearing ~~A copy of each committee member's report must be served~~
65 ~~on the petitioner and on the attorney for the alleged~~
66 ~~incapacitated person within 3 days after the report is filed and~~
67 ~~at least 5 days before the hearing on the petition.~~

68 (i) The petitioner and the alleged incapacitated person
69 may object to the introduction into evidence of all or any
70 portion of the examining committee members' reports by filing
71 and serving a written objection on the other party no later than
72 5 days before the adjudicatory hearing. The objection must state
73 the basis upon which the challenge to admissibility is made. If
74 an objection is timely filed and served, the court shall apply
75 the rules of evidence in determining the reports' admissibility.

76 For good cause shown, the court may extend the time to file and
77 serve the written objection. Only the alleged incapacitated
78 person and the petitioner are entitled to object to the
79 admissibility of the reports, unless the court provides
80 otherwise.

81 (5) ADJUDICATORY HEARING.—

82 (a) Upon appointment of the examining committee, the court
83 shall set the date upon which the petition will be heard. The
84 ~~date for the~~ adjudicatory hearing must be conducted at least 10
85 days, but no more than 30 days, after the filing of the last
86 filed report of the examining committee members ~~set no more than~~
87 ~~14 days after the filing of the reports of the examining~~
88 ~~committee members,~~ unless good cause is shown. The adjudicatory
89 hearing must be conducted at the time and place specified in the
90 notice of hearing and in a manner consistent with due process.

91 Section 2. Section 744.3725, Florida Statutes, is amended
92 to read:

93 744.3725 Procedure for extraordinary authority.—Before the
94 court may grant authority to a guardian to exercise any of the
95 rights specified in s. 744.3215(4), the court must:

96 (1) Appoint an independent attorney to act on the
97 incapacitated person's behalf, and the attorney must have the
98 opportunity to meet with the person and to present evidence and
99 cross-examine witnesses at any hearing on the petition for
100 authority to act;

101 (2) Receive as evidence independent medical,
 102 psychological, and social evaluations with respect to the
 103 incapacitated person by competent professionals or appoint its
 104 own experts to assist in the evaluations;

105 (3) Personally meet with the incapacitated person to
 106 obtain its own impression of the person's capacity, so as to
 107 afford the incapacitated person the full opportunity to express
 108 his or her personal views or desires with respect to the
 109 judicial proceeding and issue before the court;

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

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

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

119
 120 The provisions of this section and s. 744.3215(4) are procedural
 121 and do not establish any new or independent right to or
 122 authority over the termination of parental rights, dissolution
 123 of marriage, sterilization, abortion, or the termination of life
 124 support systems.

125 Section 3. Subsection (16) of section 744.441, Florida

126 Statutes, is amended to read:

127 744.441 Powers of guardian upon court approval.—After
 128 obtaining approval of the court pursuant to a petition for
 129 authorization to act, a plenary guardian of the property, or a
 130 limited guardian of the property within the powers granted by
 131 the order appointing the guardian or an approved annual or
 132 amended guardianship report, may:

133 (16) Pay reasonable funeral, interment, and grave marker
 134 expenses for the ward from the ward's estate, ~~up to a maximum of~~
 135 ~~\$6,000~~.

136 Section 4. For the purpose of incorporating the amendment
 137 made by this act to section 744.3725, Florida Statutes, in a
 138 reference thereto, subsection (4) of section 744.3215, Florida
 139 Statutes, is reenacted to read:

140 744.3215 Rights of persons determined incapacitated.—

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

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

146 (b) Consent on behalf of the ward to the performance on
 147 the ward of any experimental biomedical or behavioral procedure
 148 or to the participation by the ward in any biomedical or
 149 behavioral experiment. The court may permit such performance or
 150 participation only if:

151 1. It is of direct benefit to, and is intended to preserve
152 the life of or prevent serious impairment to the mental or
153 physical health of the ward; or

154 2. It is intended to assist the ward to develop or regain
155 his or her abilities.

156 (c) Initiate a petition for dissolution of marriage for
157 the ward.

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

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

162 Section 5. This act shall take effect July 1, 2017.