

1 A bill to be entitled
 2 An act relating to guardianship; amending s. 744.312,
 3 F.S.; providing factors for a court to consider when
 4 appointing a guardian; amending s. 744.3215, F.S.;
 5 providing that a guardian may only consent to or
 6 authorize a do-not-resuscitate order with court
 7 approval; amending s. 744.334, F.S.; providing
 8 requirements for a petition for the appointment of a
 9 guardian; defining the term "alternatives to
 10 guardianship"; amending s. 744.363, F.S.; providing
 11 requirements of the initial guardianship plan;
 12 amending s. 744.367, F.S.; providing requirements for
 13 the annual guardianship report; defining the term
 14 "remuneration"; amending s. 744.3675, F.S.; providing
 15 requirements of the annual guardianship plan; amending
 16 s. 744.446, F.S.; revising provisions relating to
 17 conflicts of interest; providing an effective date.

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

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 21 Section 1. Paragraph (e) is added to subsection (3) of
 22 section 744.312, Florida Statutes, to read:

23 744.312 Considerations in appointment of guardian.—

24 (3) The court shall also:

25 (e) Inquire into and consider potential disqualifications

26 | under s. 744.309 and potential conflicts of interest under s.
 27 | 744.446.

28 | Section 2. Paragraph (f) is added to subsection (4) of
 29 | section 744.3215, Florida Statutes, to read:

30 | 744.3215 Rights of persons determined incapacitated.—

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

33 | (f) Consent to or sign on behalf of the ward an order not
 34 | to resuscitate executed under s. 401.45(3).

35 | Section 3. Section 744.334, Florida Statutes, is amended
 36 | to read:

37 | 744.334 Petition for appointment of guardian or
 38 | professional guardian; contents.—

39 | (1) Every petition for the appointment of a guardian shall
 40 | be verified by the petitioner and shall contain statements, to
 41 | the best of petitioner's knowledge and belief, showing the name,
 42 | age, residence, and post office address of the alleged
 43 | incapacitated person or minor; the nature of her or his
 44 | incapacity, if any; the extent of guardianship desired, either
 45 | plenary or limited; the residence and post office address of the
 46 | petitioner; the names and addresses of the next of kin of the
 47 | alleged incapacitated person or minor, if known to the
 48 | petitioner; the name of the proposed guardian and the reasons
 49 | why she or he should be appointed guardian; whether the proposed
 50 | guardian is a professional guardian; the relationship and

51 | previous relationship of the proposed guardian to the alleged
52 | incapacitated person or minor ward; any other type of
53 | guardianship under part III of this chapter or alternatives to
54 | guardianship that the alleged incapacitated person or minor has
55 | designated or is in currently or has been in previously; the
56 | reasons why a guardian advocate under s. 744.3085 or other
57 | alternatives to guardianship are insufficient to meet the needs
58 | of the alleged incapacitated person or minor; and the nature and
59 | value of property subject to the guardianship; and the reasons
60 | why this person should be appointed guardian. The petition must
61 | state whether ~~If a willing and qualified guardian cannot be~~
62 | ~~located, the petition must so state. As used in this subsection,~~
63 | the term "alternatives to guardianship" means an advance
64 | directive as defined in s. 765.101, a durable power of attorney
65 | as provided in chapter 709, a representative payee under 42
66 | U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

67 | (2) If the petitioner is a professional guardian, she or
68 | he may not petition for her or his own appointment unless the
69 | petitioner is a relative of the alleged incapacitated person or
70 | minor. For purposes of this subsection, the term "relative"
71 | means an individual who would qualify to serve as a nonresident
72 | guardian under s. 744.309(2) ~~The petition for appointment of a~~
73 | ~~professional guardian must comply with the provisions of~~
74 | ~~subsection (1), and must state that the petitioner is a~~
75 | ~~professional guardian.~~

76 Section 4. Subsection (1) of section 744.363, Florida
 77 Statutes, is amended to read:

78 744.363 Initial guardianship plan.—

79 (1) The initial guardianship plan shall include all of the
 80 following:

81 (a) The provision of medical, mental, or personal care
 82 services for the welfare of the ward.~~†~~

83 (b) The provision of social and personal services for the
 84 welfare of the ward.~~†~~

85 (c) The place and kind of residential setting best suited
 86 for the needs of the ward.~~†~~

87 (d) The application of health and accident insurance and
 88 any other private or governmental benefits to which the ward may
 89 be entitled to meet any part of the costs of medical, mental
 90 health, or related services provided to the ward.~~†~~ ~~and~~

91 (e) Any physical and mental examinations necessary to
 92 determine the ward's medical and mental health treatment needs.

93 (f) A list of any preexisting do-not-resuscitate orders
 94 executed under s. 401.45(3) or preexisting advance directives,
 95 as defined in s. 765.101, the date an order or directive was
 96 signed, whether such order or directive has been suspended by
 97 the court, and a description of the steps taken to identify and
 98 locate the preexisting do-not-resuscitate order or advance
 99 directive.

100 Section 5. Subsection (3) of section 744.367, Florida

101 Statutes, is amended to read:

102 744.367 Duty to file annual guardianship report.—

103 (3) (a) The annual guardianship report of a guardian of the
 104 property must consist of an annual accounting, and the annual
 105 guardianship report of a guardian of the person must consist of
 106 an annual guardianship plan. The annual guardianship report of a
 107 guardian of the property and the annual guardianship report of a
 108 guardian of the person must both include a declaration of all
 109 remuneration received by the guardian from any source for
 110 services rendered to or on behalf of the ward. As used in this
 111 paragraph, the term "remuneration" means any payment or other
 112 benefit made directly or indirectly, overtly or covertly, or in
 113 cash or in kind to the guardian.

114 (b) The annual guardianship report must ~~shall~~ be served on
 115 the ward, unless the ward is a minor or is totally
 116 incapacitated, and on the attorney for the ward, if any. The
 117 guardian shall provide a copy to any other person as the court
 118 may direct.

119 Section 6. Paragraph (d) is added to subsection (1) of
 120 section 744.3675, Florida Statutes, to read:

121 744.3675 Annual guardianship plan.—Each guardian of the
 122 person must file with the court an annual guardianship plan
 123 which updates information about the condition of the ward. The
 124 annual plan must specify the current needs of the ward and how
 125 those needs are proposed to be met in the coming year.

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126 (1) Each plan for an adult ward must, if applicable,
127 include:

128 (d) A list of any preexisting do-not-resuscitate orders
129 executed under s. 401.45(3) or preexisting advance directives,
130 as defined in s. 765.101, the date an order or directive was
131 signed, whether such order or directive has been suspended by
132 the court, and a description of the steps taken to identify and
133 locate the preexisting do-not-resuscitate order or advance
134 directive.

135 Section 7. Subsections (2), (3), and (4) of section
136 744.446, Florida Statutes, are renumbered as subsections (3),
137 (4), and (5), respectively, present subsection (2) is amended,
138 and a new subsection (2) is added to that section, to read:

139 744.446 Conflicts of interest; prohibited activities;
140 court approval; breach of fiduciary duty.—

141 (2) A guardian may not offer, pay, solicit, or receive a
142 commission, benefit, bonus, rebate, or kickback, directly or
143 indirectly, overtly or covertly, in cash or in kind, or engage
144 in a split-fee arrangement in return for referring, soliciting,
145 or engaging in a transaction for goods or services on behalf of
146 an alleged incapacitated person or minor, or a ward, for past or
147 future goods or services.

148 (3)~~(2)~~ Unless prior approval is obtained by court order,
149 or unless such relationship existed before ~~prior to~~ appointment
150 of the guardian and is disclosed to the court in the petition

151 for appointment of guardian, a guardian may not:

152 (a) Have any interest, financial or otherwise, direct or
 153 indirect, in any business transaction or activity with the ward,
 154 the judge presiding over the case, any member of the appointed
 155 examining committee, any court employee involved in the
 156 guardianship process, or the attorney for the ward;

157 (b) Acquire an ownership, possessory, security, or other
 158 pecuniary interest adverse to the ward;

159 (c) Be designated as a beneficiary on any life insurance
 160 policy, pension, or benefit plan of the ward unless such
 161 designation was validly made by the ward before ~~prior to~~
 162 adjudication of incapacity of the ward; and

163 (d) Directly or indirectly purchase, rent, lease, or sell
 164 any property or services from or to any business entity of which
 165 the guardian or the guardian's spouse or any of the guardian's
 166 lineal descendants, or collateral kindred, is an officer,
 167 partner, director, shareholder, or proprietor, or has any
 168 financial interest.

169 Section 8. This act shall take effect July 1, 2020.