

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"; providing applicability; amending s.
 11 744.363, F.S.; revising requirements of the initial
 12 guardianship plan; amending s. 744.367, F.S.; revising
 13 requirements for the annual guardianship report;
 14 defining the term "remuneration"; amending s.
 15 744.3675, F.S.; revising requirements of the annual
 16 guardianship plan; amending s. 744.3725, F.S.;
 17 requiring the court to make a determination on a
 18 certain petition within a specified time; amending s.
 19 744.446, F.S.; revising provisions relating to
 20 conflicts of interest; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraph (e) is added to subsection (3) of
 25 section 744.312, Florida Statutes, to read:

26 | 744.312 Considerations in appointment of guardian.—
 27 | (3) The court shall also:
 28 | (e) Inquire into and consider potential disqualifications
 29 | under s. 744.309 and potential conflicts of interest under s.
 30 | 744.446.

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

33 | 744.3215 Rights of persons determined incapacitated.—

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

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

38 | Section 3. Section 744.334, Florida Statutes, is amended
 39 | to read:

40 | 744.334 Petition for appointment of guardian or
 41 | professional guardian; contents.—

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

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

70 | (2) If the petitioner is a professional guardian, she or
71 | he may not petition for her or his own appointment unless the
72 | petitioner is a relative of the alleged incapacitated person or
73 | minor. For purposes of this subsection, the term "relative"
74 | means an individual who would qualify to serve as a nonresident
75 | guardian under s. 744.309(2). This subsection does not apply to

76 | a public guardian appointed under s. 744.2006 who seeks
 77 | appointment as a guardian of a person of limited financial means
 78 | and whose compensation as the guardian for such person is paid
 79 | by the Office of Public and Professional Guardians or any local
 80 | government ~~The petition for appointment of a professional~~
 81 | ~~guardian must comply with the provisions of subsection (1), and~~
 82 | ~~must state that the petitioner is a professional guardian.~~

83 | Section 4. Subsection (1) of section 744.363, Florida
 84 | Statutes, is amended to read:

85 | 744.363 Initial guardianship plan.—

86 | (1) The initial guardianship plan shall include all of the
 87 | following:

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

90 | (b) The provision of social and personal services for the
 91 | welfare of the ward. ~~†~~

92 | (c) The place and kind of residential setting best suited
 93 | for the needs of the ward. ~~†~~

94 | (d) The application of health and accident insurance and
 95 | any other private or governmental benefits to which the ward may
 96 | be entitled to meet any part of the costs of medical, mental
 97 | health, or related services provided to the ward. ~~† and~~

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

100 | (f) A list of any preexisting do-not-resuscitate orders

101 executed under s. 401.45(3) or preexisting advance directives,
102 as defined in s. 765.101, the date an order or directive was
103 signed, whether such order or directive has been suspended by
104 the court, and a description of the steps taken to identify and
105 locate the preexisting do-not-resuscitate order or advance
106 directive.

107 Section 5. Subsection (3) of section 744.367, Florida
108 Statutes, is amended to read:

109 744.367 Duty to file annual guardianship report.—

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

121 (b) The annual guardianship report must ~~shall~~ be served on
122 the ward, unless the ward is a minor or is totally
123 incapacitated, and on the attorney for the ward, if any. The
124 guardian shall provide a copy to any other person as the court
125 may direct.

126 Section 6. Paragraph (d) is added to subsection (1) of
 127 section 744.3675, Florida Statutes, 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) A list of any preexisting do-not-resuscitate orders
 136 executed under s. 401.45(3) or preexisting advance directives,
 137 as defined in s. 765.101, the date an order or directive was
 138 signed, whether such order or directive has been suspended by
 139 the court, and a description of the steps taken to identify and
 140 locate the preexisting do-not-resuscitate order or advance
 141 directive.

142 Section 7. Section 744.3725, Florida Statutes, is amended
 143 to read:

144 744.3725 Procedure for extraordinary authority.—

145 (1) Before the court may grant authority to a guardian to
 146 exercise any of the rights specified in s. 744.3215(4), the
 147 court must:

148 (a)~~(1)~~ Appoint an independent attorney to act on the
 149 incapacitated person's behalf, and the attorney must have the
 150 opportunity to meet with the person and to present evidence and

151 cross-examine witnesses at any hearing on the petition for
152 authority to act.~~†~~

153 ~~(b)(2)~~ Receive as evidence independent medical,
154 psychological, and social evaluations with respect to the
155 incapacitated person by competent professionals or appoint its
156 own experts to assist in the evaluations.~~†~~

157 ~~(c)(3)~~ Personally meet with the incapacitated person to
158 obtain its own impression of the person's capacity, so as to
159 afford the incapacitated person the full opportunity to express
160 his or her personal views or desires with respect to the
161 judicial proceeding and issue before the court.~~†~~

162 ~~(d)(4)~~ Find by clear and convincing evidence that the
163 person lacks the capacity to make a decision about the issue
164 before the court and that the incapacitated person's capacity is
165 not likely to change in the foreseeable future.~~†~~ and

166 ~~(e)(5)~~ Be persuaded by clear and convincing evidence that
167 the authority being requested is in the best interests of the
168 incapacitated person.

169 (2) The court must make a determination within 72 hours
170 after the filing of a petition under s. 744.3215(4)(f), if the
171 court finds, based on the facts presented by the guardian and
172 any accompanying documents, that the ward is experiencing an
173 exigent circumstance such that a decision on whether to
174 resuscitate is likely to be required within 14 days after the
175 petition was filed.

176 (3) ~~The provisions of~~ This section and s. 744.3215(4) are
 177 procedural and do not establish any new or independent right to
 178 or authority over the termination of parental rights,
 179 dissolution of marriage, sterilization, abortion, or the
 180 termination of life support systems.

181 Section 8. Subsections (2), (3), and (4) of section
 182 744.446, Florida Statutes, are renumbered as subsections (3),
 183 (4), and (5), respectively, present subsection (2) is amended,
 184 and a new subsection (2) is added to that section, to read:

185 744.446 Conflicts of interest; prohibited activities;
 186 court approval; breach of fiduciary duty.-

187 (2) A guardian may not offer, pay, solicit, or receive a
 188 commission, benefit, bonus, rebate, or kickback, directly or
 189 indirectly, overtly or covertly, in cash or in kind, or engage
 190 in a split-fee arrangement in return for referring, soliciting,
 191 or engaging in a transaction for goods or services on behalf of
 192 an alleged incapacitated person or minor, or a ward, for past or
 193 future goods or services.

194 (3)~~(2)~~ Unless prior approval is obtained by court order,
 195 or unless such relationship existed before ~~prior to~~ appointment
 196 of the guardian and is disclosed to the court in the petition
 197 for appointment of guardian, a guardian may not:

198 (a) Have any interest, financial or otherwise, direct or
 199 indirect, in any business transaction or activity with the ward,
 200 the judge presiding over the case, any member of the appointed

201 examining committee, any court employee involved in the
202 guardianship process, or the attorney for the ward;

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

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

209 (d) Directly or indirectly purchase, rent, lease, or sell
210 any property or services from or to any business entity of which
211 the guardian or the guardian's spouse or any of the guardian's
212 lineal descendants, or collateral kindred, is an officer,
213 partner, director, shareholder, or proprietor, or has any
214 financial interest.

215 Section 9. This act shall take effect July 1, 2020.