

By the Committee on Judiciary; and Senators Passidomo, Stewart,
and Thurston

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1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.312,
3 F.S.; expanding factors for a court to consider when
4 appointing a guardian; amending s. 744.3215, F.S.;
5 prohibiting a guardian from consenting to, or signing
6 on behalf of a ward, an order not to resuscitate
7 without court approval; requiring the court to make a
8 determination within a specified timeframe after the
9 filing of a certain petition; amending s. 744.334,
10 F.S.; revising requirements for a petition for the
11 appointment of a guardian; defining the term
12 "alternatives to guardianship"; prohibiting
13 professional guardians from petitioning for their own
14 appointment except under certain circumstances;
15 defining the term "relative"; providing that a
16 specified provision does not apply to public guardians
17 under specified circumstances; amending s. 744.363,
18 F.S.; expanding requirements for initial guardianship
19 plans; amending s. 744.367, F.S.; expanding
20 requirements for annual guardianship reports; defining
21 the term "remuneration"; amending s. 744.3675, F.S.;
22 expanding requirements for annual guardianship plans;
23 amending s. 744.446, F.S.; prohibiting guardians from
24 taking certain actions on behalf of an alleged
25 incapacitated person or minor; revising provisions
26 relating to conflicts of interest; providing an
27 effective date.

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

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

744.312 Considerations in appointment of guardian.—

(1) If the person designated is qualified to serve pursuant to s. 744.309, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward.

(3) The court shall also:

(e) Inquire into and consider potential disqualifications under s. 744.309 and potential conflicts of interest under s. 744.446.

Section 2. Paragraph (f) is added to subsection (4) of section 744.3215, Florida Statutes, and paragraph (e) of subsection (1) of that section is republished, to read:

744.3215 Rights of persons determined incapacitated.—

(1) A person who has been determined to be incapacitated retains the right:

(e) To have a qualified guardian.

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

(f) Consent to or sign on behalf of the ward an order not to resuscitate executed under s. 401.45(3). The court must make such a determination within 72 hours after the filing of a verified petition stating:

1. The petitioner's interest in the proceeding;
2. The specific authority requested; and
3. The facts constituting the basis for the relief sought

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59 and that the authority being requested is in the best interest
60 of the ward.

61 Section 3. Section 744.334, Florida Statutes, is amended to
62 read:

63 744.334 Petition for appointment of guardian or
64 professional guardian; contents.—

65 (1) Every petition for the appointment of a guardian shall
66 be verified by the petitioner and shall contain statements, to
67 the best of petitioner's knowledge and belief, showing the name,
68 age, residence, and post office address of the alleged
69 incapacitated person or minor; the nature of her or his
70 incapacity, if any; the extent of guardianship desired, either
71 plenary or limited; the residence and post office address of the
72 petitioner; the names and addresses of the next of kin of the
73 alleged incapacitated person or minor, if known to the
74 petitioner; the name of the proposed guardian and the reasons
75 why she or he should be appointed guardian; whether the proposed
76 guardian is a professional guardian; the relationship and
77 previous relationship of the proposed guardian to the alleged
78 incapacitated person or minor ward; any other type of
79 guardianship under part III of this chapter or alternatives to
80 guardianship that the alleged incapacitated person or minor has
81 designated or is in currently or has been in previously; the
82 reasons why a guardian advocate under s. 744.3085 or other
83 alternatives to guardianship are insufficient to meet the needs
84 of the alleged incapacitated person or minor; and the nature and
85 value of property subject to the guardianship; and the reasons
86 why this person should be appointed guardian. The petition must
87 state whether ~~If~~ a willing and qualified guardian cannot be

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88 ~~located, the petition must so state. As used in this subsection,~~
89 the term "alternatives to guardianship" means an advance
90 directive as defined in s. 765.101, a durable power of attorney
91 as provided in chapter 709, a representative payee under 42
92 U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

93 (2) If the petitioner is a professional guardian, she or he
94 may not petition for her or his own appointment unless the
95 petitioner is a relative of the alleged incapacitated person or
96 minor. For purposes of this subsection, the term "relative"
97 means an individual who would qualify to serve as a nonresident
98 guardian under s. 744.309(2). This subsection does not apply to
99 a public guardian appointed under s. 744.2006 who seeks
100 appointment as a guardian of a person of limited financial means
101 and whose compensation as guardian for such person would be paid
102 from the Office of Public and Professional Guardians or any
103 local government ~~The petition for appointment of a professional~~
104 ~~guardian must comply with the provisions of subsection (1), and~~
105 ~~must state that the petitioner is a professional guardian.~~

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

108 744.363 Initial guardianship plan.—

109 (1) The initial guardianship plan shall include all of the
110 following:

111 (a) The provision of medical, mental, or personal care
112 services for the welfare of the ward.†

113 (b) The provision of social and personal services for the
114 welfare of the ward.†

115 (c) The place and kind of residential setting best suited
116 for the needs of the ward.†

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117 (d) The application of health and accident insurance and
118 any other private or governmental benefits to which the ward may
119 be entitled to meet any part of the costs of medical, mental
120 health, or related services provided to the ward, ~~and~~

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

123 (f) A list of any preexisting orders not to resuscitate
124 executed under s. 401.45(3) or preexisting advance directives,
125 as defined in s. 765.101, the date an order or directive was
126 signed, whether such order or directive has been suspended by
127 the court, and a description of the steps taken to identify and
128 locate the preexisting order not to resuscitate or advance
129 directive.

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

132 744.367 Duty to file annual guardianship report.—

133 (3) (a) The annual guardianship report of a guardian of the
134 property must consist of an annual accounting, and the annual
135 guardianship report of a guardian of the person must consist of
136 an annual guardianship plan. The annual guardianship report of a
137 guardian of the property and the annual guardianship report of a
138 guardian of the person must both include a declaration of all
139 remuneration received by the guardian from any source for
140 services rendered to or on behalf of the ward. As used in this
141 paragraph, the term "remuneration" means any payment or other
142 benefit made directly or indirectly, overtly or covertly, or in
143 cash or in kind to the guardian.

144 (b) The annual guardianship report must ~~shall~~ be served on
145 the ward, unless the ward is a minor or is totally

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146 incapacitated, and on the attorney for the ward, if any. The
147 guardian shall provide a copy to any other person as the court
148 may direct.

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

151 744.3675 Annual guardianship plan.—Each guardian of the
152 person must file with the court an annual guardianship plan
153 which updates information about the condition of the ward. The
154 annual plan must specify the current needs of the ward and how
155 those needs are proposed to be met in the coming year.

156 (1) Each plan for an adult ward must, if applicable,
157 include:

158 (d) A list of any preexisting orders not to resuscitate
159 executed under s. 401.45(3) or preexisting advance directives,
160 as defined in s. 765.101, the date an order or directive was
161 signed, whether such order or directive has been suspended by
162 the court, and a description of the steps taken to identify and
163 locate the preexisting order not to resuscitate or advance
164 directive.

165 Section 7. Present subsections (2), (3), and (4) of section
166 744.446, Florida Statutes, are redesignated as subsections (3),
167 (4), and (5), respectively, a new subsection (2) is added to
168 that section, and present subsection (2) of that section is
169 amended, to read:

170 744.446 Conflicts of interest; prohibited activities; court
171 approval; breach of fiduciary duty.—

172 (2) A guardian may not offer, pay, solicit, or receive a
173 commission, benefit, bonus, rebate, or kickback, directly or
174 indirectly, overtly or covertly, in cash or in kind, or engage

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175 in a split-fee arrangement in return for referring, soliciting,
176 or engaging in a transaction for goods or services on behalf of
177 an alleged incapacitated person or minor, or a ward, for past or
178 future goods or services.

179 (3)~~(2)~~ Unless prior approval is obtained by court order, or
180 unless such relationship existed before ~~prior to~~ appointment of
181 the guardian and is disclosed to the court in the petition for
182 appointment of guardian, a guardian may not:

183 (a) Have any interest, financial or otherwise, direct or
184 indirect, in any business transaction or activity with the ward,
185 the judge presiding over the case, any member of the appointed
186 examining committee, any court employee involved in the
187 guardianship process, or the attorney for the ward;

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

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

194 (d) Directly or indirectly purchase, rent, lease, or sell
195 any property or services from or to any business entity of which
196 the guardian or the guardian's spouse or any of the guardian's
197 lineal descendants, or collateral kindred, is an officer,
198 partner, director, shareholder, or proprietor, or has any
199 financial interest.

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