

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Committee

3 Representative Berfield offered the following:

4
 5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 744.3115, Florida Statutes, is amended
 8 to read:

9 744.3115 Advance directives for health care.—In each
 10 proceeding in which a guardian is appointed under this chapter,
 11 the court shall determine whether the ward, prior to incapacity,
 12 has executed any valid advance directive under chapter 765.

13 (1) If any advance directive exists, the court shall
 14 specify in its order and letters of guardianship what authority,
 15 if any, the guardian shall exercise over the ward with regard to
 16 health care decisions and what authority, if any, the surrogate

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17 shall continue to exercise over the ward with regard to health
18 care decisions.

19 (2) Pursuant to the grounds listed in s. 765.105, or if
20 the health care surrogate is unwilling or unable to act, the
21 court may, upon motion from any interested person or, upon its
22 own motion ~~may~~, with notice to the surrogate, next of kin, so
23 far as is known, and any other ~~appropriate~~ interested parties
24 persons as the court may direct, modify or revoke the authority
25 of the surrogate to make health care decisions for the ward. Any
26 order revoking or modifying the authority of the surrogate must
27 be supported by specific written findings of fact after a
28 hearing on the motion.

29 (3) If a ~~the~~ court order provides that a ~~the~~ guardian is
30 responsible for making health care decisions for the ward, the
31 guardian shall assume the responsibilities of the surrogate
32 which are provided in s. 765.205. For purposes of this section,
33 the term "health care decision" has the same meaning as in s.
34 765.101.

35 (4) If a guardian discovers a health care advance
36 directive for the ward after being appointed, the guardian must
37 file the advance directive with the court as soon after
38 discovery as is reasonable, but no later than the earlier of the
39 due date for the initial guardianship report, the annual
40 guardianship plan, or any petition seeking to exercise authority
41 regarding life-prolonging procedures in compliance with s.

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42 744.4431. Upon the filing of a health care advance directive,
43 the court must determine whether it is an alternative to
44 guardianship and what authority, if any, a guardian will
45 exercise over health care decisions, pursuant to subparagraphs
46 (2) and (3).

47 (5) Upon a finding by a court that a health care surrogate
48 designation or a durable power of attorney is an alternative to
49 guardianship for health care decisions, the surrogate or agent
50 may exercise the right to make health care decisions under the
51 applicable advance directive without order of the court even if
52 the surrogate or agent has been appointed as guardian of the
53 ward for other delegable rights.

54 Section 2. Paragraph (f) of subsection (3) of section
55 744.3215, Florida Statutes, is amended to read:

56 744.3215 Rights of persons determined incapacitated.—

57 (3) Rights that may be removed from a person by an order
58 determining incapacity and which may be delegated to the
59 guardian include the right:

60 (f) ~~To consent to medical and mental health treatment.~~ To
61 make health care decisions, as defined s. 765.101. If this
62 right has been removed, court approval regarding the withdrawal
63 or withholding of life-prolonging procedures, as defined in s.
64 765.101, shall be sought as required by s. 744.4431.

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65 Section 3. Paragraph (f) of subsection (1) of section
66 744.363, Florida Statutes, is amended and paragraph (g) is added
67 to subsection (1) of that section to read:

68 744.363 Initial guardianship plan.—

69 (1) The initial guardianship plan shall include all of the
70 following:

71 (f) 1. A list of any preexisting:

72 a. Orders not to resuscitate executed in accordance with
73 ~~under~~ s. 401.45(3) and the dates such orders were signed; or

74 b. ~~preexisting~~ Advance directives, as defined in s.
75 765.101, and the dates such directives were signed. ~~an order or~~
76 ~~directive was signed,~~

77 2. For each item listed under subparagraph 1., the plan
78 must state whether the ~~such~~ order or directive has been revoked,
79 modified, or suspended by the court. ~~and~~

80 (g) A description of the steps taken to identify and
81 locate the preexisting order not to resuscitate or advance
82 directive.

83 Section 4. Paragraph (d) of subsection (1) of section
84 744.3675, Florida Statutes, is amended and paragraph (e) is
85 added to subsection (1) of that section to read:

86 744.3675 Annual guardianship plan.—Each guardian of the
87 person must file with the court an annual guardianship plan
88 which updates information about the condition of the ward. The

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89 annual plan must specify the current needs of the ward and how
90 those needs are proposed to be met in the coming year.

91 (1) Each plan for an adult ward must, if applicable,
92 include:

93 (d) 1. A list of any preexisting:

94 a. Orders not to resuscitate executed in accordance with
95 under s. 401.45(3) and the dates such orders were signed; or

96 b. ~~preexisting~~ Advance directives, as defined in s.
97 765.101, and the dates such directives were signed. ~~an order or~~
98 directive was signed,

99 2. For each item listed under subparagraph 1., the plan
100 must state whether the ~~such~~ order or directive has been revoked,
101 modified, or suspended by the court., ~~and~~

102 (e) A description of the steps taken to identify and
103 locate the preexisting order not to resuscitate or advance
104 directive.

105 Section 5. Section 744.4431, Florida Statutes, is created
106 to read:

107 744.4431 Guardianship power regarding life-prolonging
108 procedures.-

109 (1) Except as provided in this section, decisions by a
110 professional guardian, as defined in s. 744.102, to withhold or
111 withdraw life-prolonging procedures from, or to execute an order
112 not to resuscitate for, a ward must be approved by the court. A
113 professional guardian appointed to act on behalf of a ward's

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114 person must petition the court pursuant to the Florida Probate
115 Rules for authority to consent to withhold or withdraw life-
116 prolonging procedures or to execute an order not to resuscitate
117 prior to taking such action except as provided by subsection
118 (7).

119 (2) The petition by the professional guardian must contain
120 all of the following:

121 (a) A description of the proposed action or decision for
122 which court approval is sought and documentation of the
123 authority of the professional guardian to make health care
124 decisions on behalf of the ward.

125 (b) A statement regarding any known objections to the
126 relief sought in the petition.

127 (c) A description of the ward's known wishes, including
128 identifying all advance directives executed by the ward, or, if
129 there is no indication of what the ward would have chosen, a
130 description of why the relief is in the ward's best interest.

131 (d) Any exigent circumstances which exist that necessitate
132 immediate relief.

133 (e) A description of the circumstances requiring the
134 proposed action or decision and evidence including affidavits,
135 medical records or other supporting documentation showing that
136 the proposed decision satisfies the criteria in s. 765.305, s.
137 765.401(3), or s. 765.404, as applicable.

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138 (3) The professional guardian must show by clear and
139 convincing evidence that the decision they are requesting to
140 make would have been the decision the ward would have chosen if
141 the ward had capacity or, if there is no indication of what the
142 ward would have chosen, that the decision is in the ward's best
143 interest.

144 (4) The professional guardian must serve notice of the
145 petition, and of any hearing, on the ward, the ward's attorney,
146 if any, the ward's next of kin, so far as is known, and such
147 other interested persons as the court may direct, unless waived
148 by the court.

149 (5) The court must hold a hearing if:

150 (a) The ward or the ward's attorney objects;

151 (b) The ward's next of kin or an interested person objects
152 on any basis set forth in s. 765.105(1);

153 (c) The guardian, the ward, or the ward's attorney request
154 a hearing; or

155 (d) The court has insufficient information to determine
156 whether the criteria for granting the petition has been met.

157 (6) If a hearing is required and exigent circumstances are
158 alleged, the court must hold a preliminary hearing within 72
159 hours after the petition is filed and do one of the following:

160 (a) Rule on the relief requested immediately after the
161 preliminary hearing; or

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162 (b) Conduct an evidentiary hearing not later than 4 days
163 after the preliminary hearing and rule on the relief requested
164 immediately after the evidentiary hearing.

165 (7) Court approval is not required for the following
166 decisions:

167 (a) A decision to withhold or withdraw life-prolonging
168 procedures made by a professional guardian to whom authority has
169 been granted by the court pursuant to s. 744.3115, to carry out
170 the instructions in or to take actions consistent with, the
171 ward's advance directive when there are no known objections from
172 the ward or the ward's attorney, and no objections from the
173 ward's next of kin, so far as is known, or such other interested
174 persons as the court may direct based on s. 765.105(1).

175 (b) A decision by a guardian who has been delegated health
176 care decision-making authority to execute an order not to
177 resuscitate, as described in s. 401.45(3)(a), if the ward is in
178 a hospital and the following conditions are met:

179 1. The ward's primary treating physician and at least one
180 other consulting physician document in the ward's medical record
181 that:

182 a. There is no reasonable medical probability for
183 recovery from, or a cure of the ward's underlying medical
184 condition;

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185 b. The ward is in an end-stage condition, terminal
186 condition, or persistent vegetative state as defined in s.
187 765.101 and that the ward's death is imminent; and

188 c. Resuscitation will cause the ward physical harm or
189 additional pain.

190 2. The professional guardian has notified the ward's next
191 of kin, so far as is known, and any interested persons as the
192 court may direct and the action is not contrary to the ward's
193 expressed wishes, there are no known objections from the ward or
194 the ward's attorney, or the ward's next of kin, so far as is
195 known, or such other interested persons, as the court may
196 direct, on the basis of s. 765.105(1).

197 (8) Within 2 business days after executing an order not to
198 resuscitate under paragraph (7)(b), the professional guardian
199 must notify the court, in writing of the following:

200 a. The date the order was executed;

201 b. The location of the ward when the order was executed;
202 and

203 c. The names of the physicians who documented the ward's
204 condition in the ward's medical record.

205 Section 6. Section 744.441, Florida Statutes, is amended
206 to read:

207 744.441 Powers of guardian upon court approval.—After
208 obtaining approval of the court pursuant to a petition for
209 authorization to act, ÷

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210 ~~(1)~~ a plenary guardian of the property, or a limited
211 guardian of the property within the powers granted by the order
212 appointing the guardian or an approved annual or amended
213 guardianship report, may do all of the following:

214 ~~(1)(a)~~ Perform, compromise, or refuse performance of a
215 ward's contracts that continue as obligations of the estate, as
216 he or she may determine under the circumstances.

217 ~~(2)(b)~~ Execute, exercise, or release any powers as
218 trustee, personal representative, custodian for minors,
219 conservator, or donee of any power of appointment or other power
220 that the ward might have lawfully exercised, consummated, or
221 executed if not incapacitated, if the best interest of the ward
222 requires such execution, exercise, or release.

223 ~~(3)(e)~~ Make ordinary or extraordinary repairs or
224 alterations in buildings or other structures; demolish any
225 improvements; or raze existing, or erect new, party walls or
226 buildings.

227 ~~(4)(d)~~ Subdivide, develop, or dedicate land to public use;
228 make or obtain the vacation of plats and adjust boundaries;
229 adjust differences in valuation on exchange or partition by
230 giving or receiving consideration; or dedicate easements to
231 public use without consideration.

232 ~~(5)(e)~~ Enter into a lease as lessor or lessee for any
233 purpose, with or without option to purchase or renew, for a term
234 within, or extending beyond, the period of guardianship.

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235 ~~(6)-(f)~~ Enter into a lease or arrangement for exploration
236 and removal of minerals or other natural resources or enter into
237 a pooling or unitization agreement.

238 ~~(7)-(g)~~ Abandon property when, in the opinion of the
239 guardian, it is valueless or is so encumbered or in such
240 condition that it is of no benefit to the estate.

241 ~~(8)-(h)~~ Pay calls, assessments, and other sums chargeable
242 or accruing against, or on account of, securities.

243 ~~(9)-(i)~~ Borrow money, with or without security, to be
244 repaid from the property or otherwise and advance money for the
245 protection of the estate.

246 ~~(10)-(j)~~ Effect a fair and reasonable compromise with any
247 debtor or obligor or extend, renew, or in any manner modify the
248 terms of any obligation owing to the estate.

249 ~~(11)-(k)~~ Prosecute or defend claims or proceedings in any
250 jurisdiction for the protection of the estate and of the
251 guardian in the performance of his or her duties. Before
252 authorizing a guardian to bring an action described in s.
253 736.0207, the court shall first find that the action appears to
254 be in the ward's best interests during the ward's probable
255 lifetime. There shall be a rebuttable presumption that an action
256 challenging the ward's revocation of all or part of a trust is
257 not in the ward's best interests if the revocation relates
258 solely to a devise. This subsection ~~paragraph~~ does not preclude
259 a challenge after the ward's death. If the court denies a

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260 request that a guardian be authorized to bring an action
261 described in s. 736.0207, the court must ~~shall~~ review the
262 continued need for a guardian and the extent of the need for
263 delegation of the ward's rights.

264 (12) ~~(1)~~ Sell, mortgage, or lease any real or personal
265 property of the estate, including homestead property, or any
266 interest therein for cash or credit, or for part cash and part
267 credit, and with or without security for unpaid balances.

268 (13) ~~(m)~~ Continue any unincorporated business or venture in
269 which the ward was engaged.

270 (14) ~~(n)~~ Purchase the entire fee simple title to real
271 estate in this state in which the guardian has no interest, but
272 the purchase may be made only for a home for the ward, to
273 protect the home of the ward or the ward's interest, or as a
274 home for the ward's dependent family. If the ward is a married
275 person and the home of the ward or of the dependent family of
276 the ward is owned by the ward and spouse as an estate by the
277 entirety and the home is sold pursuant to the authority of
278 subsection (12) ~~paragraph (1)~~, the court may authorize the
279 investment of any part or all of the proceeds from the sale
280 toward the purchase of a fee simple title to real estate in this
281 state for a home for the ward or the dependent family of the
282 ward as an estate by the entirety owned by the ward and spouse.
283 If the guardian is authorized to acquire title to real estate
284 for the ward or dependent family of the ward as an estate by the

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285 entirety in accordance with the preceding provisions, the
286 conveyance must ~~shall~~ be in the name of the ward and spouse and
287 ~~shall~~ be effective to create an estate by the entirety in the
288 ward and spouse.

289 (15) ~~(e)~~ Exercise any option contained in any policy of
290 insurance payable to, or inuring to the benefit of, the ward.

291 (16) ~~(p)~~ Pay reasonable funeral, interment, and grave
292 marker expenses for the ward from the ward's estate.

293 (17) ~~(q)~~ Make gifts of the ward's property to members of
294 the ward's family in estate and income tax planning procedures.

295 (18) ~~(r)~~ When the ward's will evinces an objective to
296 obtain a United States estate tax charitable deduction by use of
297 a split interest trust (as that term is defined in s. 736.1201),
298 but the maximum charitable deduction otherwise allowable will
299 not be achieved in whole or in part, execute a codicil on the
300 ward's behalf amending said will to obtain the maximum
301 charitable deduction allowable without diminishing the aggregate
302 value of the benefits of any beneficiary under such will.

303 (19) ~~(s)~~ Create or amend revocable trusts or create
304 irrevocable trusts of property of the ward's estate which may
305 extend beyond the disability or life of the ward in connection
306 with estate, gift, income, or other tax planning or in
307 connection with estate planning. The court shall retain
308 oversight of the assets transferred to a trust, unless otherwise
309 ordered by the court.

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310 ~~(20)(t)~~ Renounce or disclaim any interest by testate or
311 intestate succession or by inter vivos transfer.

312 ~~(21)(u)~~ Enter into contracts that are appropriate for, and
313 in the best interest of, the ward.

314 ~~(22)(v)~~ As to a minor ward, pay expenses of the ward's
315 support, health, maintenance, and education, if the ward's
316 parents, or either of them, are alive.

317 ~~(2) A plenary guardian or a limited guardian of a ward may~~
318 ~~sign an order not to resuscitate as provided in s. 401.45(3).~~
319 ~~When a plenary guardian or a limited guardian of a ward seeks to~~
320 ~~obtain approval of the court to sign an order not to~~
321 ~~resuscitate, if required by exigent circumstances, the court~~
322 ~~must hold a preliminary hearing within 72 hours after the~~
323 ~~petition is filed, and:~~

324 ~~(a) Rule on the relief requested immediately after the~~
325 ~~preliminary hearing; or~~

326 ~~(b) Conduct an evidentiary hearing not later than 4 days~~
327 ~~after the preliminary hearing and rule on the relief requested~~
328 ~~immediately after the evidentiary hearing.~~

329 Section 7. This act shall take effect July 1, 2023.

330