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1
2 An act relating to guardianship proceedings; amending
3 s. 709.2109, F.S.; requiring the filing of a motion
4 before termination or suspension of a power of
5 attorney in proceedings to determine a principal's
6 incapacity or for appointment of a guardian advocate
7 under certain circumstances; amending ss. 744.107 and
8 744.1075, F.S.; authorizing a court to appoint the
9 office of criminal conflict and civil regional counsel
10 as a court monitor in guardianship proceedings;
11 amending s. 744.108, F.S.; providing that fees and
12 costs incurred by an attorney who has rendered
13 services to a ward in compensation proceedings are
14 payable from guardianship assets; providing that
15 expert testimony is not required in proceedings to
16 determine compensation for an attorney or guardian;
17 requiring a person offering expert testimony to
18 provide notice to interested persons; providing that
19 expert witness fees are recoverable by the prevailing
20 interested person; amending s. 744.3025, F.S.;
21 providing that a court may appoint a guardian ad litem
22 to represent a minor if necessary to protect the
23 minor's interest in a settlement; providing that a
24 settlement of a minor's claim is subject to certain
25 confidentiality provisions; amending s. 744.3031,
26 F.S.; requiring notification of an alleged



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27 | incapacitated person and such person's attorney of a
28 | petition for appointment of an emergency temporary
29 | guardian before a hearing on the petition commences;
30 | prohibiting the payment of the emergency temporary
31 | guardian's final fees and his or her final attorney
32 | fees until the final report is filed; amending s.
33 | 744.309, F.S.; providing that certain for-profit
34 | corporations may act as guardian of a person;
35 | providing conditions; requiring the posting and
36 | maintenance of a fiduciary bond; limiting liability;
37 | requiring the corporation to maintain certain
38 | insurance coverage; providing for certain
39 | grandfathered guardianships; amending s. 744.3115,
40 | F.S.; directing the court to specify authority for
41 | health care decisions with respect to a ward's advance
42 | directive; amending s. 744.312, F.S.; prohibiting a
43 | court from giving preference to the appointment of
44 | certain persons as guardians; providing requirements
45 | for the appointment of professional guardians;
46 | amending s. 744.3203, F.S.; providing grounds for
47 | filing a motion for suspension of a power of attorney
48 | before determination of incapacity; providing criteria
49 | for such motion; requiring a hearing under certain
50 | conditions; providing for the award of attorney fees
51 | and costs; amending s. 744.331, F.S.; directing the
52 | court to consider certain factors when determining



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53 | incapacity; requiring that the examining committee be
54 | paid from state funds as court-appointed expert
55 | witnesses if a petition for incapacity is dismissed;
56 | requiring that a petitioner reimburse the state for
57 | such expert witness fees if the court finds the
58 | petition to have been filed in bad faith; amending s.
59 | 744.344, F.S.; providing conditions under which the
60 | court is authorized to appoint an emergency temporary
61 | guardian; amending s. 744.345, F.S.; revising
62 | provisions relating to letters of guardianship;
63 | creating s. 744.359, F.S.; prohibiting abuse, neglect,
64 | or exploitation of a ward by a guardian; requiring
65 | reporting thereof to the Department of Children and
66 | Families central abuse hotline; providing for
67 | interpretation; amending s. 744.361, F.S.; providing
68 | additional powers and duties of a guardian; amending
69 | s. 744.367, F.S.; revising the period during which a
70 | guardian must file an annual guardianship plan with
71 | the court; amending s. 744.369, F.S.; providing for
72 | the continuance of a guardian's authority to act under
73 | an expired annual report under certain circumstances;
74 | amending s. 744.3715, F.S.; providing that an
75 | interested party may petition the court regarding a
76 | guardian's failure to comply with the duties of a
77 | guardian; amending s. 744.464, F.S.; establishing the
78 | burden of proof for determining restoration of



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79 | capacity of a ward in pending guardianship cases;
 80 | requiring a court to advance such cases on the
 81 | calendar; providing applicability; providing an
 82 | effective date.

84 | Be It Enacted by the Legislature of the State of Florida:

86 | Section 1. Subsection (3) of section 709.2109, Florida
 87 | Statutes, is amended to read:

88 | 709.2109 Termination or suspension of power of attorney or
 89 | agent's authority.—

90 | (3) If any person initiates judicial proceedings to
 91 | determine the principal's incapacity or for the appointment of a
 92 | guardian advocate, the authority granted under the power of
 93 | attorney is suspended until the petition is dismissed or
 94 | withdrawn or the court enters an order authorizing the agent to
 95 | exercise one or more powers granted under the power of attorney.
 96 | However, if the agent named in the power of attorney is the
 97 | principal's parent, spouse, child, or grandchild, the authority
 98 | under the power of attorney is not suspended unless a verified
 99 | motion in accordance with s. 744.3203 is also filed.

100 | (a) If an emergency arises after initiation of proceedings
 101 | to determine incapacity and before adjudication regarding the
 102 | principal's capacity, the agent may petition the court in which
 103 | the proceeding is pending for authorization to exercise a power
 104 | granted under the power of attorney. The petition must set forth



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105 the nature of the emergency, the property or matter involved,
106 and the power to be exercised by the agent.

107 (b) Notwithstanding the provisions of this section, unless
108 otherwise ordered by the court, a proceeding to determine
109 incapacity does not affect the authority of the agent to make
110 health care decisions for the principal, including, but not
111 limited to, those provided in chapter 765. If the principal has
112 executed a health care advance directive designating a health
113 care surrogate, the terms of the directive control if the
114 directive and the power of attorney are in conflict unless the
115 power of attorney is later executed and expressly states
116 otherwise.

117 Section 2. Subsection (5) is added to section 744.107,
118 Florida Statutes, to read:

119 744.107 Court monitors.—

120 (5) The court may appoint the office of criminal conflict
121 and civil regional counsel as monitor if the ward is indigent.

122 Section 3. Subsection (6) is added to section 744.1075,
123 Florida Statutes, to read:

124 744.1075 Emergency court monitor.—

125 (6) The court may appoint the office of criminal conflict
126 and civil regional counsel as monitor if the ward is indigent.

127 Section 4. Subsections (5) and (8) of section 744.108,
128 Florida Statutes, are amended, and subsection (9) is added to
129 that section, to read:

130 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees



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131 and expenses.—

132 (5) All petitions for guardian ~~guardian's~~ and attorney
133 ~~attorney's~~ fees and expenses must be accompanied by an itemized
134 description of the services performed for the fees and expenses
135 sought to be recovered.

136 (8) When court proceedings are instituted to review or
137 determine a guardian's or an attorney's fees under subsection
138 (2), such proceedings are part of the guardianship
139 administration process and the costs, including costs and
140 attorney fees for the guardian's attorney, an attorney appointed
141 under s. 744.331(2), or an attorney who has rendered services to
142 the ward, shall be determined by the court and paid from the
143 assets of the guardianship estate unless the court finds the
144 requested compensation under subsection (2) to be substantially
145 unreasonable.

146 (9) The court may determine that a request for
147 compensation by the guardian, the guardian's attorney, a person
148 employed by the guardian, an attorney appointed under s.
149 744.331(2), or an attorney who has rendered services to the
150 ward, is reasonable without receiving expert testimony. A person
151 or party may offer expert testimony for or against a request for
152 compensation after giving notice to interested persons.
153 Reasonable expert witness fees shall be awarded by the court and
154 paid from the assets of the guardianship estate using the
155 standards in subsection (8).

156 Section 5. Section 744.3025, Florida Statutes, is amended



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157 to read:

158 744.3025 Claims of minors.—

159 (1) (a) The court may appoint a guardian ad litem to
160 represent the minor's interest before approving a settlement of
161 the minor's portion of the claim in a any case in which a minor
162 has a claim for personal injury, property damage, wrongful
163 death, or other cause of action in which the gross settlement of
164 the claim exceeds \$15,000 if the court believes a guardian ad
165 litem is necessary to protect the minor's interest.

166 (b) Except as provided in paragraph (e), the court shall
167 appoint a guardian ad litem to represent the minor's interest
168 before approving a settlement of the minor's claim in a any case
169 in which the gross settlement involving a minor equals or
170 exceeds \$50,000.

171 (c) The appointment of the guardian ad litem must be
172 without the necessity of bond or notice.

173 (d) The duty of the guardian ad litem is to protect the
174 minor's interests as described in the Florida Probate Rules.

175 (e) A court need not appoint a guardian ad litem for the
176 minor if a guardian of the minor has previously been appointed
177 and that guardian has no potential adverse interest to the
178 minor. ~~A court may appoint a guardian ad litem if the court~~
179 ~~believes a guardian ad litem is necessary to protect the~~
180 ~~interests of the minor.~~

181 (2) Unless waived, the court shall award reasonable fees
182 and costs to the guardian ad litem to be paid out of the gross



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183 proceeds of the settlement.

184 (3) A settlement of a claim pursuant to this section is
185 subject to the confidentiality provisions of this chapter.

186 Section 6. Subsections (2) through (8) of section
187 744.3031, Florida Statutes, are renumbered as subsections (3)
188 through (9), respectively, and a new subsection (2) is added to
189 that section, and present subsection (8) of that section is
190 amended, to read:

191 744.3031 Emergency temporary guardianship.—

192 (2) Notice of filing of the petition for appointment of an
193 emergency temporary guardian and a hearing on the petition must
194 be served on the alleged incapacitated person and on the alleged
195 incapacitated person's attorney at least 24 hours before the
196 hearing on the petition is commenced, unless the petitioner
197 demonstrates that substantial harm to the alleged incapacitated
198 person would occur if the 24-hour notice is given.

199 (9)-(8)(a) An emergency temporary guardian shall file a
200 final report no later than 30 days after the expiration of the
201 emergency temporary guardianship.

202 (b) A court may not authorize any payment of the emergency
203 temporary guardian's final fees or the final fees of his or her
204 attorney until the final report is filed.

205 (c)-(b) If an emergency temporary guardian is a guardian
206 for the property, the final report must consist of a verified
207 inventory of the property, as provided in s. 744.365, as of the
208 date the letters of emergency temporary guardianship were



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209 issued, a final accounting that gives a full and correct account
 210 of the receipts and disbursements of all the property of the
 211 ward over which the guardian had control, and a statement of the
 212 property of the ward on hand at the end of the emergency
 213 temporary guardianship. If the emergency temporary guardian
 214 becomes the successor guardian of the property, the final report
 215 must satisfy the requirements of the initial guardianship report
 216 for the guardian of the property as provided in s. 744.362.

217 (d)~~(e)~~ If the emergency temporary guardian is a guardian
 218 of the person, the final report must summarize the activities of
 219 the temporary guardian with regard to residential placement,
 220 medical condition, mental health and rehabilitative services,
 221 and the social condition of the ward to the extent of the
 222 authority granted to the temporary guardian in the letters of
 223 guardianship. If the emergency temporary guardian becomes the
 224 successor guardian of the person, the report must satisfy the
 225 requirements of the initial report for a guardian of the person
 226 as stated in s. 744.362.

227 (e)~~(d)~~ A copy of the final report of the emergency
 228 temporary guardianship shall be served on the successor guardian
 229 and the ward.

230 Section 7. Subsection (7) is added to section 744.309,
 231 Florida Statutes, to read:

232 744.309 Who may be appointed guardian of a resident ward.—

233 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate
 234 guardian existing under the laws of this state is qualified to



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235 act as guardian of a ward if the entity is qualified to do
236 business in the state, is wholly owned by the person who is the
237 circuit's public guardian in the circuit where the corporate
238 guardian is appointed, has met the registration requirements of
239 s. 744.1083, and posts and maintains a bond or insurance policy
240 under paragraph (a).

241 (a) The for-profit corporate guardian must meet one of the
242 following requirements:

243 1. Post and maintain a blanket fiduciary bond of at least
244 \$250,000 with the clerk of the circuit court in the county in
245 which the corporate guardian has its principal place of
246 business. The corporate guardian shall provide proof of the
247 fiduciary bond to the clerks of each additional circuit court in
248 which he or she is serving as a guardian. The bond must cover
249 all wards for whom the corporation has been appointed as a
250 guardian at any given time. The liability of the provider of the
251 bond is limited to the face value of the bond, regardless of the
252 number of wards for whom the corporation is acting as a
253 guardian. The terms of the bond must cover the acts or omissions
254 of each agent or employee of the corporation who has direct
255 contact with the ward or access to the assets of the
256 guardianship. The bond must be payable to the Governor and his
257 or her successors in office and be conditioned on the faithful
258 performance of all duties of a guardian under this chapter. The
259 bond is in lieu of and not in addition to the bond required
260 under s. 744.1085 but is in addition to any bonds required under



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261 s. 744.351. The expenses incurred to satisfy the bonding
262 requirements of this section may not be paid with the assets of
263 any ward; or

264 2. Maintain a liability insurance policy that covers any
265 losses sustained by the guardianship caused by errors,
266 omissions, or any intentional misconduct committed by the
267 corporation's officers or agents. The policy must cover all
268 wards for whom the corporation is acting as a guardian for
269 losses up to \$250,000. The terms of the policy must cover acts
270 or omissions of each agent or employee of the corporation who
271 has direct contact with the ward or access to the assets of the
272 guardianship. The corporate guardian shall provide proof of the
273 policy to the clerk of each circuit court in which he or she is
274 servng as a guardian.

275 (b) A for-profit corporation appointed as guardian before
276 July 1, 2015, is also qualified to serve as a guardian in the
277 particular guardianships in which the corporation has already
278 been appointed as guardian.

279 Section 8. Section 744.3115, Florida Statutes, is amended
280 to read:

281 744.3115 Advance directives for health care.—In each
282 proceeding in which a guardian is appointed under this chapter,
283 the court shall determine whether the ward, prior to incapacity,
284 has executed any valid advance directive under chapter 765. If
285 any advance directive exists, the court shall specify in its
286 order and letters of guardianship what authority, if any, the



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287 guardian shall exercise over the ward with regard to health care
288 decisions and what authority, if any, the surrogate shall
289 continue to exercise over the ward with regard to health care
290 decisions ~~surrogate~~. Pursuant to the grounds listed in s.
291 765.105, the court, upon its own motion, may, with notice to the
292 surrogate and any other appropriate parties, modify or revoke
293 the authority of the surrogate to make health care decisions for
294 the ward. Any order revoking or modifying the authority of the
295 surrogate must be supported by specific written findings of
296 fact. If the court order provides that the guardian is
297 responsible for making health care decisions for the ward, the
298 guardian shall assume the responsibilities of the surrogate
299 which are provided in s. 765.205. For purposes of this section,
300 the term "health care decision" has the same meaning as in s.
301 765.101.

302 Section 9. Section 744.312, Florida Statutes, is reordered
303 and amended to read:

304 744.312 Considerations in appointment of guardian.—

305 (2)(1) If a guardian cannot be appointed under subsection
306 (1) Subject to the provisions of subsection (4), the court may
307 appoint any person who is fit and proper and qualified to act as
308 guardian, whether related to the ward or not.

309 ~~(2)~~ The court shall give preference to the appointment of
310 a person who:

311 (a) Is related by blood or marriage to the ward;



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312 (b) Has educational, professional, or business experience
313 relevant to the nature of the services sought to be provided;

314 (c) Has the capacity to manage the financial resources
315 involved; or

316 (d) Has the ability to meet the requirements of the law
317 and the unique needs of the individual case.

318 (3) The court shall also:

319 (a) Consider the wishes expressed by an incapacitated
320 person as to who shall be appointed guardian.†

321 (b) Consider the preference of a minor who is age 14 or
322 over as to who should be appointed guardian.†

323 (c) Consider any person designated as guardian in any will
324 in which the ward is a beneficiary.

325 (d) Consider the wishes of the ward's next of kin, when
326 the ward cannot express a preference.

327 (1)† ~~(4)~~ If the person designated is qualified to serve
328 pursuant to s. 744.309, the court shall appoint any standby
329 guardian or preneed guardian, unless the court determines that
330 appointing such person is contrary to the best interests of the
331 ward.

332 (4) Except when a standby guardian or a preneed guardian
333 is appointed by the court:

334 (a) In each case when a court appoints a professional
335 guardian and does not use a rotation system for such
336 appointment, the court must make specific findings of fact
337 stating why the person was selected as guardian in the



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338 particular matter involved. The findings must reference each of
339 the factors listed in subsections (2) and (3).

340 (b) An emergency temporary guardian who is a professional
341 guardian may not be appointed as the permanent guardian of a
342 ward unless one of the next of kin of the alleged incapacitated
343 person or the ward requests that the professional guardian be
344 appointed as permanent guardian. The court may waive the
345 limitations of this paragraph if the special requirements of the
346 guardianship demand that the court appoint a guardian because he
347 or she has special talent or specific prior experience. The
348 court must make specific findings of fact that justify waiving
349 the limitations of this paragraph.

350 (5) The court may not give preference to the appointment
351 of a person under subsection (2) based solely on the fact that
352 such person was appointed by the court to serve as an emergency
353 temporary guardian.

354 Section 10. Section 744.3203, Florida Statutes, is created
355 to read:

356 744.3203 Suspension of power of attorney before incapacity
357 determination.—

358 (1) At any time during proceedings to determine incapacity
359 but before the entry of an order determining incapacity, the
360 authority granted under an alleged incapacitated person's power
361 of attorney to a parent, spouse, child, or grandchild is
362 suspended when the petitioner files a motion stating that a



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363 specific power of attorney should be suspended for any of the
364 following grounds:

365 (a) The agent's decisions are not in accord with the
366 alleged incapacitated person's known desires.

367 (b) The power of attorney is invalid.

368 (c) The agent has failed to discharge his or her duties or
369 incapacity or illness renders the agent incapable of discharging
370 duties.

371 (d) The agent has abused powers.

372 (e) There is a danger that the property of the alleged
373 incapacitated person may be wasted, misappropriated, or lost
374 unless the authority under the power of attorney is suspended.

375
376 Grounds for suspending a power of attorney do not include the
377 existence of a dispute between the agent and the petitioner
378 which is more appropriate for resolution in some other forum or
379 a legal proceeding other than a guardianship proceeding.

380 (2) The motion must:

381 (a) Identify one or more of the grounds in subsection (1);

382 (b) Include specific statements of fact showing that
383 grounds exist to justify the relief sought; and

384 (c) Include the following statement: "Under penalties of
385 perjury, I declare that I have read the foregoing motion and
386 that the facts stated in it are true to the best of my knowledge
387 and belief," followed by the signature of the petitioner.



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388 (3) Upon the filing of a response to the motion by the
389 agent under the power of attorney, the court shall schedule the
390 motion for an expedited hearing. Unless an emergency arises and
391 the agent's response sets forth the nature of the emergency, the
392 property or matter involved, and the power to be exercised by
393 the agent, notice must be given to all interested persons, the
394 alleged incapacitated person, and the alleged incapacitated
395 person's attorney. The court order following the hearing must
396 set forth what powers the agent is permitted to exercise, if
397 any, pending the outcome of the petition to determine
398 incapacity.

399 (4) In addition to any other remedy authorized by law, a
400 court may award reasonable attorney fees and costs to an agent
401 who successfully challenges the suspension of the power of
402 attorney if the petitioner's motion was made in bad faith.

403 (5) The suspension of authority granted to persons other
404 than a parent, spouse, child, or grandchild shall be as provided
405 in s. 709.2109.

406 Section 11. Subsection (6) and paragraph (c) of subsection
407 (7) of section 744.331, Florida Statutes, are amended to read:

408 744.331 Procedures to determine incapacity.—

409 (6) ORDER DETERMINING INCAPACITY.—If, after making
410 findings of fact on the basis of clear and convincing evidence,
411 the court finds that a person is incapacitated with respect to
412 the exercise of a particular right, or all rights, the court
413 shall enter a written order determining such incapacity. In



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414 determining incapacity, the court shall consider the person's
415 unique needs and abilities and may only remove those rights that
416 the court finds the person does not have the capacity to
417 exercise. A person is determined to be incapacitated only with
418 respect to those rights specified in the order.

419 (a) The court shall make the following findings:

420 1. The exact nature and scope of the person's
421 incapacities;

422 2. The exact areas in which the person lacks capacity to
423 make informed decisions about care and treatment services or to
424 meet the essential requirements for her or his physical or
425 mental health or safety;

426 3. The specific legal disabilities to which the person is
427 subject; and

428 4. The specific rights that the person is incapable of
429 exercising.

430 (b) When an order determines that a person is incapable of
431 exercising delegable rights, the court must consider and find
432 whether there is an alternative to guardianship that will
433 sufficiently address the problems of the incapacitated person. ~~A~~
434 ~~guardian must be appointed to exercise the incapacitated~~
435 ~~person's delegable rights unless the court finds there is an~~
436 ~~alternative.~~ A guardian may not be appointed if the court finds
437 there is an alternative to guardianship which will sufficiently
438 address the problems of the incapacitated person. If the court
439 finds there is not an alternative to guardianship that



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440 sufficiently addresses the problems of the incapacitated person,
441 a guardian must be appointed to exercise the incapacitated
442 person's delegable rights.

443 (c) In determining that a person is totally incapacitated,
444 the order must contain findings of fact demonstrating that the
445 individual is totally without capacity to care for herself or
446 himself or her or his property.

447 (d) An order adjudicating a person to be incapacitated
448 constitutes proof of such incapacity until further order of the
449 court.

450 (e) After the order determining that the person is
451 incapacitated has been filed with the clerk, it must be served
452 on the incapacitated person. The person is deemed incapacitated
453 only to the extent of the findings of the court. The filing of
454 the order is notice of the incapacity. An incapacitated person
455 retains all rights not specifically removed by the court.

456 (f) Upon the filing of a verified statement by an
457 interested person stating:

458 1. That he or she has a good faith belief that the alleged
459 incapacitated person's trust, trust amendment, or durable power
460 of attorney is invalid; and

461 2. A reasonable factual basis for that belief,
462
463 the trust, trust amendment, or durable power of attorney shall
464 not be deemed to be an alternative to the appointment of a
465 guardian. The appointment of a guardian does not limit the



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466 court's power to determine that certain authority granted by a
 467 durable power of attorney is to remain exercisable by the agent
 468 ~~attorney in fact.~~

469 (7) FEES.—

470 (c) If the petition is dismissed or denied:~~7~~

471 1. The fees of the examining committee shall be paid upon
 472 court order as expert witness fees under s. 29.004(6).

473 2. Costs and attorney ~~attorney's~~ fees of the proceeding
 474 may be assessed against the petitioner if the court finds the
 475 petition to have been filed in bad faith. The petitioner shall
 476 also reimburse the state courts system for any amounts paid
 477 under subparagraph 1. upon such a finding.

478 Section 12. Subsection (4) of section 744.344, Florida
 479 Statutes, is amended to read:

480 744.344 Order of appointment.—

481 (4) If a petition for the appointment of a guardian has
 482 not been filed or ruled upon at the time of the hearing on the
 483 petition to determine capacity, the court may appoint an
 484 emergency temporary guardian in the manner and for the purposes
 485 specified in s. 744.3031.

486 Section 13. Section 744.345, Florida Statutes, is amended
 487 to read:

488 744.345 Letters of guardianship.—Letters of guardianship
 489 shall be issued to the guardian and shall specify whether the
 490 guardianship pertains to the person, or the property, or both,
 491 of the ward. The letters must state whether the guardianship is



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492 plenary or limited, and, if limited, the letters must state the
493 powers and duties of the guardian. ~~If the guardianship is~~
494 ~~limited,~~ The letters shall state whether or not and to what
495 extent the guardian is authorized to act on behalf of the ward
496 with regard to any advance directive previously executed by the
497 ward.

498 Section 14. Section 744.359, Florida Statutes, is created
499 to read:

500 744.359 Abuse, neglect, or exploitation by a guardian.—

501 (1) A guardian may not abuse, neglect, or exploit a ward.

502 (2) A guardian has committed exploitation when the
503 guardian:

504 (a) Commits fraud in obtaining appointment as a guardian;

505 (b) Abuses his or her powers; or

506 (c) Wastes, embezzles, or intentionally mismanages the
507 assets of the ward.

508 (3) A person who believes that a guardian is abusing,
509 neglecting, or exploiting a ward shall report the incident to
510 the central abuse hotline of the Department of Children and
511 Families.

512 (4) This section shall be interpreted in conformity with
513 s. 825.103.

514 Section 15. Section 744.361, Florida Statutes, is amended
515 to read:

516 744.361 Powers and duties of guardian.—



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517 (1) The guardian of an incapacitated person is a fiduciary
518 and may exercise only those rights that have been removed from
519 the ward and delegated to the guardian. The guardian of a minor
520 shall exercise the powers of a plenary guardian.

521 (2) The guardian shall act within the scope of the
522 authority granted by the court and as provided by law.

523 (3) The guardian shall act in good faith.

524 (4) A guardian may not act in a manner that is contrary to
525 the ward's best interests under the circumstances.

526 (5) A guardian who has special skills or expertise, or is
527 appointed in reliance upon the guardian's representation that
528 the guardian has special skills or expertise, shall use those
529 special skills or expertise when acting on behalf of the ward.

530 (6)~~(2)~~ The guardian shall file an initial guardianship
531 report in accordance with s. 744.362.

532 (7)~~(3)~~ The guardian shall file a guardianship report
533 annually in accordance with s. 744.367.

534 (8)~~(4)~~ The guardian of the person shall implement the
535 guardianship plan.

536 (9)~~(5)~~ When two or more guardians have been appointed, the
537 guardians shall consult with each other.

538 (10)~~(6)~~ A guardian who is given authority over any
539 property of the ward shall:

540 (a) Protect and preserve the property and invest it
541 prudently as provided in chapter 518, apply it as provided in s.



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542 744.397, and keep clear, distinct, and accurate records of the
543 administration of the ward's property ~~account for it faithfully.~~

544 (b) Perform all other duties required of him or her by
545 law.

546 (c) At the termination of the guardianship, deliver the
547 property of the ward to the person lawfully entitled to it.

548 (11)~~(7)~~ The guardian shall observe the standards in
549 dealing with the guardianship property that would be observed by
550 a prudent person dealing with the property of another, ~~and, if~~
551 ~~the guardian has special skills or is named guardian on the~~
552 ~~basis of representations of special skills or expertise, he or~~
553 ~~she is under a duty to use those skills.~~

554 (12)~~(8)~~ The guardian, if authorized by the court, shall
555 take possession of all of the ward's property and of the rents,
556 income, issues, and profits from it, whether accruing before or
557 after the guardian's appointment, and of the proceeds arising
558 from the sale, lease, or mortgage of the property or of any
559 part. All of the property and the rents, income, issues, and
560 profits from it are assets in the hands of the guardian for the
561 payment of debts, taxes, claims, charges, and expenses of the
562 guardianship and for the care, support, maintenance, and
563 education of the ward or the ward's dependents, as provided for
564 under the terms of the guardianship plan or by law.

565 (13) Recognizing that every individual has unique needs
566 and abilities, a guardian who is given authority over a ward's
567 person shall, as appropriate under the circumstances:



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568 (a) Consider the expressed desires of the ward as known by
569 the guardian when making decisions that affect the ward.

570 (b) Allow the ward to maintain contact with family and
571 friends unless the guardian believes that such contact may cause
572 harm to the ward.

573 (c) Not restrict the physical liberty of the ward more
574 than reasonably necessary to protect the ward or another person
575 from serious physical injury, illness, or disease.

576 (d) Assist the ward in developing or regaining capacity,
577 if medically possible.

578 (e) Notify the court if the guardian believes that the
579 ward has regained capacity and that one or more of the rights
580 that have been removed should be restored to the ward.

581 (f) To the extent applicable, make provision for the
582 medical, mental, rehabilitative, or personal care services for
583 the welfare of the ward.

584 (g) To the extent applicable, acquire a clear
585 understanding of the risks and benefits of a recommended course
586 of health care treatment before making a health care decision.

587 (h) Evaluate the ward's medical and health care options,
588 financial resources, and desires when making residential
589 decisions that are best suited for the current needs of the
590 ward.

591 (i) Advocate on behalf of the ward in institutional and
592 other residential settings and regarding access to home and
593 community-based services.



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594 (j) When not inconsistent with the person's goals, needs,
595 and preferences, acquire an understanding of the available
596 residential options and give priority to home and other
597 community-based services and settings.

598 ~~(14)(9)~~ A professional guardian must ensure that each of
599 the guardian's wards is personally visited by the guardian or
600 one of the guardian's professional staff at least once each
601 calendar quarter. During the personal visit, the guardian or the
602 guardian's professional staff person shall assess:

603 (a) The ward's physical appearance and condition.

604 (b) The appropriateness of the ward's current living
605 situation.

606 (c) The need for any additional services and the necessity
607 for continuation of existing services, taking into consideration
608 all aspects of social, psychological, educational, direct
609 service, health, and personal care needs.

610 (d) The nature and extent of visitation and communication
611 with the ward's family and friends.

612

613 This subsection does not apply to a professional guardian who
614 has been appointed only as guardian of the property.

615 Section 16. Subsection (1) of section 744.367, Florida
616 Statutes, is amended to read:

617 744.367 Duty to file annual guardianship report.—

618 (1) Unless the court requires filing on a calendar-year
619 basis, each guardian of the person shall file with the court an



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620 annual guardianship plan at least 60 days, but no more than
621 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary
622 month that the letters of guardianship were signed, and the plan
623 must cover the coming fiscal year, ending on the last day in
624 such anniversary month. If the court requires calendar-year
625 filing, the guardianship plan for the forthcoming calendar year
626 must be filed on or after September 1 but no later than December
627 1 of the current year ~~before April 1 of each year.~~

628 Section 17. Subsection (8) of section 744.369, Florida
629 Statutes, is amended to read:

630 744.369 Judicial review of guardianship reports.—

631 (8) The approved report constitutes the authority for the
632 guardian to act in the forthcoming year. The powers of the
633 guardian are limited by the terms of the report. The annual
634 report may not grant additional authority to the guardian
635 without a hearing, as provided for in s. 744.331, to determine
636 that the ward is incapacitated to act in that matter. Unless the
637 court orders otherwise, the guardian may continue to act under
638 authority of the last-approved report until the forthcoming
639 year's report is approved.

640 Section 18. Subsection (1) of section 744.3715, Florida
641 Statutes, is amended to read:

642 744.3715 Petition for interim judicial review.—

643 (1) At any time, any interested person, including the
644 ward, may petition the court for review alleging that the
645 guardian is not complying with the guardianship plan, ~~or~~ is



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646 | exceeding his or her authority under the guardianship plan, is
647 | acting in a manner contrary to s. 744.361, is denying visitation
648 | between the ward and his or her relatives in violation of s.
649 | 744.361(13), or ~~and the guardian~~ is not acting in the best
650 | interest of the ward. The petition for review must state the
651 | nature of the objection to the guardian's action or proposed
652 | action. Upon the filing of any such petition, the court shall
653 | review the petition and act upon it expeditiously.

654 | Section 19. Paragraphs (a) and (b) of subsection (3) of
655 | section 744.464, Florida Statutes, are amended, and subsection
656 | (4) is added to that section, to read:

657 | 744.464 Restoration to capacity.—

658 | (3) ORDER OF RESTORATION.—

659 | (a) If no objections are filed, and the court is satisfied
660 | that with the medical examination establishes by a preponderance
661 | of the evidence that restoration of all or some of the ward's
662 | rights is appropriate, the court shall enter an order of
663 | restoration of capacity, restoring all or some of the rights
664 | which were removed from the ward in accordance with those
665 | findings. ~~The order must be issued within 30 days after the~~
666 | ~~medical report is filed.~~

667 | (b) At the conclusion of a hearing, conducted pursuant to
668 | s. 744.1095, the court shall make specific findings of fact and,
669 | based on a preponderance of the evidence, enter an order either
670 | denying the suggestion of capacity or restoring all or some of
671 | the rights which were removed from the ward. The ward has the



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672 burden of proving by a preponderance of the evidence that the
673 restoration of capacity is warranted.

674 (4) TIMELINESS OF HEARING.—The court shall give priority
675 to any suggestion of capacity and shall advance the cause on the
676 calendar.

677 Section 20. Sections 709.2109 and 744.3203, Florida
678 Statutes, as created by this act, apply to all proceedings filed
679 on or after July 1, 2015. The amendments made by this act to ss.
680 744.107, 744.1075, 744.108, 744.3025, 744.3031, 744.309,
681 744.3115, 744.312, 744.331, 744.344, 744.345, 744.359, 744.361,
682 744.367, 744.369, 744.3715, and 744.464, Florida Statutes, apply
683 to all proceedings pending on July 1, 2015.

684 Section 21. This act shall take effect July 1, 2015.