

Committee Substitute for Senate Bill No. 1782

An act relating to guardianship; creating s. 744.7101, F.S.; providing a short title; creating s. 744.711, F.S.; providing legislative findings and intent relating to the Joining Forces for Public Guardianship program; creating s. 744.712, F.S.; establishing the grant program; providing for the program's purposes; creating s. 744.713, F.S.; providing for the administration of the program by the Statewide Public Guardianship Office; providing the duties and responsibilities of the office relating to the grant program; creating s. 744.714, F.S.; providing eligibility for grant awards; creating s. 744.715, F.S.; providing application requirements, an application process, and review criteria; amending s. 393.063, F.S.; redefining the term "guardian advocate" for purposes of provisions governing services for the developmentally disabled; amending s. 393.12, F.S.; exempting a guardian advocate from a requirement to file an annual accounting in certain situations; amending s. 744.102, F.S.; defining the term "guardian advocate" for purposes of the Florida Guardianship Law; amending s. 744.1083, F.S.; requiring that additional information be reviewed by the Statewide Public Guardianship Office prior to registering a professional guardian; creating s. 744.3085, F.S.; recommending that courts consider appointing a guardian advocate for persons with developmental disabilities as a less restrictive form of guardianship; amending s. 744.3135, F.S.; requiring the clerks of court to forward certain information to the Statewide Public Guardianship Office; amending s. 744.3678, F.S.; exempting a guardian from a requirement to file an annual accounting in certain situations; amending s. 744.7082, F.S.; defining the term "direct-support organization"; requiring the Secretary of Elderly Affairs to appoint a board of directors for the direct-support organization; authorizing such an organization to use property and facilities of the Department of Elderly Affairs and the Statewide Public Guardianship Office; requiring an annual audit of the organization; providing for the dissolution of entities improperly using the direct-support organization designation; amending ss. 121.091, 709.08, and 744.1085, F.S., relating to the designation of beneficiaries, the durable power of attorney, and the regulation of professional guardians; conforming cross-references; providing effective dates.

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

Section 1. Section 744.7101, Florida Statutes, is created to read:

744.7101 Short title.—Sections 744.7101-744.715 may be cited as the "Joining Forces for Public Guardianship Act."

Section 2. Section 744.711, Florida Statutes, is created to read:

744.711 Legislative findings and intent.—The Legislature finds that public guardianship programs are necessary to ensure that the rights and

best interests of Florida's vulnerable indigent and incapacitated residents are protected. In addition, the Legislature finds that the best solution to this problem is to encourage each county to establish, through the Statewide Public Guardianship Office, a local office of public guardian for the purpose of providing guardianship services to incapacitated persons when a private guardian is not available. Therefore, the Legislature intends to establish the Joining Forces for Public Guardianship matching grant program for the purpose of assisting counties to establish and fund community-supported public guardianship programs.

Section 3. Section 744.712, Florida Statutes, is created to read:

744.712 Joining Forces for Public Guardianship grant program; purpose.—The Joining Forces for Public Guardianship matching grant program shall be established and administered by the Statewide Public Guardianship Office within the Department of Elderly Affairs. The purpose of the program is to provide start-up funding to encourage communities to develop and administer locally funded and supported public guardianship programs to address the needs of indigent and incapacitated residents.

(1) The Statewide Public Guardianship Office may distribute the grant funds as follows:

(a) As initial start-up funding to encourage counties that have no office of public guardian to establish an office, or as initial start-up funding to open an additional office of public guardian within a county whose public guardianship needs require more than one office of public guardian.

(b) As support funding to operational offices of public guardian that demonstrate a necessity for funds to meet the public guardianship needs of a particular geographic area in the state which the office serves.

(c) To assist counties that have an operating public guardianship program but that propose to expand the geographic area or population of persons they serve, or to develop and administer innovative programs to increase access to public guardianship in this state.

Notwithstanding this subsection, the executive director of the office may award emergency grants if he or she determines that the award is in the best interests of public guardianship in this state. Before making an emergency grant, the executive director must obtain the written approval of the Secretary of Elderly Affairs. Subsections (2), (3), and (4) do not apply to the distribution of emergency grant funds.

(2) One or more grants may be awarded within a county. However, a county may not receive an award that equals, or multiple awards that cumulatively equal, more than 20 percent of the total amount of grant funds appropriated during any fiscal year.

(3) If an applicant is eligible and meets the requirements to receive grant funds more than once, the Statewide Public Guardianship Office shall award funds to prior awardees in the following manner:

(a) In the second year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 75 percent of the total amount of grant funds awarded within that county in year one.

(b) In the third year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 60 percent of the total amount of grant funds awarded within that county in year one.

(c) In the fourth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 45 percent of the total amount of grant funds awarded within that county in year one.

(d) In the fifth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 30 percent of the total amount of grant funds awarded within that county in year one.

(e) In the sixth year that grant funds are awarded, the cumulative sum of the award provided to one or more applicants within the same county may not exceed 15 percent of the total amount of grant funds awarded within that county in year one.

The Statewide Public Guardianship Office may not award grant funds to any applicant within a county that has received grant funds for more than 6 years.

(4) Grant funds shall be used only to provide direct services to indigent wards, except that up to 10 percent of the grant funds may be retained by the awardee for administrative expenses.

(5) Implementation of the program is subject to a specific appropriation by the Legislature in the General Appropriations Act.

Section 4. Section 744.713, Florida Statutes, is created to read:

744.713 Program administration; duties of the Statewide Public Guardianship Office.—The Statewide Public Guardianship Office shall administer the grant program. The office shall:

(1) Publicize the availability of grant funds to entities that may be eligible for the funds.

(2) Establish an application process for submitting a grant proposal.

(3) Request, receive, and review proposals from applicants seeking grant funds.

(4) Determine the amount of grant funds each awardee may receive and award grant funds to applicants.

(5) Develop a monitoring process to evaluate grant awardees, which may include an annual monitoring visit to each awardee's local office.

(6) Ensure that persons or organizations awarded grant funds meet and adhere to the requirements of this act.

(7) Adopt rules as necessary to administer the grant program and this act.

Section 5. Section 744.714, Florida Statutes, is created to read:

744.714 Eligibility.—

(1) Any person or organization that has not been awarded a grant must meet all of the following conditions to be eligible to receive a grant:

(a) The applicant must meet or directly employ staff that meet the minimum qualifications for a public guardian under this chapter.

(b) The applicant must have already been appointed by, or is pending appointment by, the Statewide Public Guardianship Office to become an office of public guardian in this state.

(2) Any person or organization that has been awarded a grant must meet all of the following conditions to be eligible to receive another grant:

(a) The applicant must meet or directly employ staff that meet the minimum qualifications for a public guardian under this chapter.

(b) The applicant must have been appointed by, or is pending reappointment by, the Statewide Public Guardianship Office to be an office of public guardian in this state.

(c) The applicant must have achieved a satisfactory monitoring score during the applicant's most recent evaluation.

Section 6. Section 744.715, Florida Statutes, is created to read:

744.715 Grant application requirements; review criteria; awards process.—Grant applications must be submitted to the Statewide Public Guardianship Office for review and approval.

(1) A grant application must contain:

(a) The specific amount of funds being requested.

(b) The proposed annual budget for the office of public guardian for which the applicant is applying on behalf of, including all sources of funding, and a detailed report of proposed expenditures, including administrative costs.

(c) The total number of wards the applicant intends to serve during the grant period.

(d) Evidence that the applicant has:

1. Attempted to procure funds and has exhausted all possible other sources of funding; or

2. Procured funds from local sources, but the total amount of the funds collected or pledged is not sufficient to meet the need for public guardianship in the geographic area that the applicant intends to serve.

(e) An agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds to the public guardianship program totaling not less than \$1 for every \$1 of grant funds awarded. For purposes of this section, an applicant may provide evidence of agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$1 for every \$1 of grant funds awarded. In-kind contributions, such as materials, commodities, office space, or other types of facilities, personnel services, or other items as determined by rule shall be considered by the office and may be counted as part or all of the local matching funds.

(f) A detailed plan describing how the office of public guardian for which the applicant is applying on behalf of will be funded in future years.

(g) Any other information determined by rule as necessary to assist in evaluating grant applicants.

(2) If the Statewide Public Guardianship Office determines that an applicant meets the requirements for an award of grant funds, the office may award the applicant any amount of grant funds the executive director deems appropriate, if the amount awarded meets the requirements of this act. The office may adopt a rule allocating the maximum allowable amount of grant funds which may be expended on any ward.

(3) A grant awardee must submit a new grant application for each year of additional funding.

(4)(a) In the first year of the Joining Forces for Public Guardianship program's existence, the Statewide Public Guardianship Office shall give priority in awarding grant funds to those entities that:

1. Are operating as appointed offices of public guardians in this state;
2. Meet all of the requirements for being awarded a grant under this act; and
3. Demonstrate a need for grant funds during the current fiscal year due to a loss of local funding formerly raised through court filing fees.

(b) In each fiscal year after the first year that grant funds are distributed, the Statewide Public Guardianship Office may give priority to awarding grant funds to those entities that:

1. Meet all of the requirements of this act for being awarded grant funds; and

2. Submit with their application an agreement or confirmation from a local funding source, such as a county, municipality, or any other public or private organization, that the local funding source will contribute matching funds totaling an amount equal to or exceeding \$2 for every \$1 of grant funds awarded by the office. An entity may submit with its application agreements or confirmations from multiple local funding sources showing that the local funding sources will pool their contributed matching funds to the public guardianship program for a combined total of not less than \$2 for every \$1 of grant funds awarded. In-kind contributions allowable under this section shall be evaluated by the Statewide Public Guardianship Office and may be counted as part or all of the local matching funds.

Section 7. Subsection (25) of section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.—For the purposes of this chapter:

(25) “Guardian advocate” means a person appointed by a written order of the circuit court to represent a person with developmental disabilities under in any proceedings brought pursuant to s. 393.12, and excludes the use of the same term as applied to a guardian advocate for mentally ill persons in chapter 394.

Section 8. Paragraph (h) of subsection (2) of section 393.12, Florida Statutes, is amended to read:

393.12 Capacity; appointment of guardian advocate.—

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(h) Powers and duties of guardian advocate.—A guardian advocate for a person with developmental disabilities shall be a any person or corporation qualified to act as guardian, with the same powers, duties, and responsibilities required of a guardian under pursuant to chapter 744 or those defined by court order under pursuant to this section. However, a guardian advocate may not be required to file an annual accounting under s. 744.3678 if the court determines that the person with developmental disabilities receives income only from Social Security benefits and the guardian advocate is the person’s representative payee for the benefits.

Section 9. Present subsections (10) through (19) of section 744.102, Florida Statutes, are redesignated as subsections (11) through (20), respectively, and a new subsection (10) is added to that section to read:

744.102 Definitions.—As used in this chapter, the term:

(10) “Guardian advocate” means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12. As used in this chapter, the term does not apply to a guardian advocate appointed for a person determined incompetent to consent to treatment under s. 394.4598.

Section 10. Section 744.1083, Florida Statutes, is amended to read:

744.1083 Professional guardian registration.—

(1) A professional guardian must register with the Statewide Public Guardianship Office established in part IX of this chapter.

(2) Annual registration shall be made on forms furnished by the Statewide Public Guardianship Office and accompanied by the applicable registration fee as determined by rule. ~~The Such~~ fee ~~may shall~~ not exceed \$100.

(3) Registration must include the following:

(a) If the professional guardian is a natural person, the name, address, date of birth, and employer identification or social security number of the professional guardian.

(b) If the professional guardian is a partnership or association, the name, address, and date of birth of every member, and the employer identification number of the partnership or association.

(c) If the professional guardian is a corporation, the name, address, and employer identification number of the corporation; the name, address, and date of birth of each of its directors and officers; the name of its resident agent; and the name, address, and date of birth of each person having at least a 10-percent interest in the corporation.

(d) The name, address, date of birth, and employer identification number, if applicable, of each person providing guardian-delegated financial or personal guardianship services for wards.

(e) Documentation that the bonding and educational requirements of s. 744.1085 have been met, ~~and that background screening has been conducted pursuant to s. 744.3135. Compliance with this section shall constitute compliance with the attestation requirement of s. 435.04(5).~~

(f) Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, through partnership, corporation, or any other business organization.

(4) Prior to registering a professional guardian, the Statewide Public Guardianship Office must receive and review copies of the credit and criminal investigations conducted under s. 744.3135. The credit and criminal investigations must have been completed within the previous 2 years.

(5) The executive director of the office may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of this chapter. If the executive director denies registration to a professional guardian, the Statewide Public Guardianship Office must send written notification of the denial to the chief judge of each judicial circuit in which the guardian was serving on the day of the office's decision to deny registration.

(6)(4) The Department of Elderly Affairs may adopt rules necessary to administer this section.

(7)(5) A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state, may, but ~~is shall~~ not be required to, register as a professional guardian under this section. If a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association described in this subsection elects to register as a professional guardian under this subsection, the requirements of ~~subsections (3) and (4) do subsection (3) shall~~ not apply and the registration ~~must shall~~ include only the name, address, and employer identification number of the registrant, the name and address of its registered agent, if any, and the documentation described in paragraph (3)(e).

(8)(6) The Department of Elderly Affairs may contract with the Florida Guardianship Foundation or other not-for-profit entity to register professional guardians.

(9)(7) The department or its contractor shall ensure that the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.

(10)(8) A state college or university or an independent college or university as described ~~in pursuant to~~ s. 1009.98(3)(a), may, but ~~is shall~~ not be required to, register as a professional guardian under this section. If a state college or university or independent college or university elects to register as a professional guardian under this subsection, the requirements of subsection (3) ~~do shall~~ not apply and the registration ~~must shall~~ include only the name, address, and employer identification number of the registrant.

Section 11. Section 744.3085, Florida Statutes, is created to read:

744.3085 Guardian advocates.—A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate. Unless otherwise specified, the proceeding shall be governed by the Florida Probate Rules. In accordance with the legislative intent of this chapter, courts are encouraged to consider appointing a guardian advocate, when appropriate, as a less restrictive form of guardianship.

Section 12. Section 744.3135, Florida Statutes, as amended by section 114 of chapter 2003-402, Laws of Florida, is amended to read:

744.3135 Credit and criminal investigation.—The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening

as required under s. 435.04. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the Florida Department of Law Enforcement for processing. The professional guardian shall pay to the clerk of the court a fee of up to \$7.50 for handling and processing professional guardian files. The results of the fingerprint checks shall be forwarded to the clerk of court who shall maintain the results in a guardian file and shall make the results available to the court. If credit or criminal investigations are required, the court must consider the results of the investigations ~~before~~ in appointing a guardian. Professional guardians and all employees of a professional guardian who have a fiduciary responsibility to a ward, so appointed, must resubmit, at their own expense, to an investigation of credit history, and undergo level 1 background screening as required under s. 435.03, at least every 2 years after the date of their appointment. At any time, the court may require guardians or their employees to submit to an investigation of credit history and undergo level 1 background screening as required under s. 435.03. The court must consider the results of these investigations in reappointing a guardian.

(1) Upon receiving the results of a credit or criminal investigation of any public or professional guardian, the clerk of the court shall forward copies of the results to the Statewide Public Guardianship Office in order that the results may be maintained in the guardian's registration file.

(2) This section does ~~shall~~ not apply to a professional guardian, or to the employees of a professional guardian, which ~~that~~ is a trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 13. Subsection (5) is added to section 744.3678, Florida Statutes, as amended by section 116 of chapter 2003-402, Laws of Florida, to read:

744.3678 Annual accounting.—

(5) This section does not apply if the court determines that the ward receives income only from Social Security benefits and the guardian is the ward's representative payee for the benefits.

Section 14. Effective upon this act becoming a law, section 744.7082, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 744.7082, F.S., for present text.)

744.7082 Direct-support organization; definition; use of property; board of directors; audit; dissolution.—

(1) DEFINITION.—As used in this section, the term “direct-support organization” means an organization whose sole purpose is to support the Statewide Public Guardianship Office and is:

(a) A not-for-profit corporation incorporated under chapter 617 and approved by the Department of State;

(b) Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office; and

(c) Determined by the Statewide Public Guardianship Office to be consistent with the goals of the office, in the best interests of the state, and in accordance with the adopted goals and mission of the Department of Elderly Affairs and the Statewide Public Guardianship Office.

(2) CONTRACT.—The direct-support organization shall operate under a written contract with the Statewide Public Guardianship Office. The written contract must provide for:

(a) Certification by the Statewide Public Guardianship Office that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the office and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(b) The reversion of moneys and property held in trust by the direct-support organization:

1. To the Statewide Public Guardianship Office if the direct-support organization is no longer approved to operate for the office;

2. To the Statewide Public Guardianship Office if the direct-support organization ceases to exist;

3. To the Department of Elderly Affairs if the Statewide Public Guardianship Office ceases to exist; or

4. To the state if the Department of Elderly Affairs ceases to exist.

The fiscal year of the direct-support organization shall begin on July 1 of each year and end on June 30 of the following year.

(c) The disclosure of the material provisions of the contract, and the distinction between the Statewide Public Guardianship Office and the direct-support organization, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

(3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs shall appoint a board of directors for the direct-support organization from a list of nominees submitted by the executive director of the Statewide Public Guardianship Office.

(4) USE OF PROPERTY.—The Department of Elderly Affairs may permit, without charge, appropriate use of fixed property and facilities of the

department or the Statewide Public Guardianship Office by the direct-support organization. The department may prescribe any condition with which the direct-support organization must comply in order to use fixed property or facilities of the department or the Statewide Public Guardianship Office.

(5) MONEYS.—Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the written contract with the Statewide Public Guardianship Office. Expenditures of the direct-support organization shall be expressly used to support the Statewide Public Guardianship Office. The expenditures of the direct-support organization may not be used for the purpose of lobbying as defined in s. 11.045.

(6) AUDIT.—The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

(7) DISSOLUTION.—After July 1, 2004, any not-for-profit corporation incorporated under chapter 617 that is determined by a circuit court to be representing itself as a direct-support organization created under this section, but that does not have a written contract with the Statewide Public Guardianship Office in compliance with this section, is considered to meet the grounds for a judicial dissolution described in s. 617.1430(1)(a). The Statewide Public Guardianship Office shall be the recipient for all assets held by the dissolved corporation which accrued during the period that the dissolved corporation represented itself as a direct-support organization created under this section.

Section 15. Paragraph (c) of subsection (8) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(8) DESIGNATION OF BENEFICIARIES.—

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person as provided in s. 121.021(46), and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if such person is no longer a minor or incapacitated as defined in s. 744.102(11) and (12) s. 744.102(10) and (11).

Section 16. Subsection (1) and paragraphs (b), (d), and (f) of subsection (4) of section 709.08, Florida Statutes, are amended to read:

709.08 Durable power of attorney.—

(1) CREATION OF DURABLE POWER OF ATTORNEY.—A durable power of attorney is a written power of attorney by which a principal designates another as the principal’s attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: “This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in s. 709.08, Florida Statutes”; or similar words that show the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent incapacity, except as otherwise provided by this section. The durable power of attorney is exercisable as of the date of execution; however, if the durable power of attorney is conditioned upon the principal’s lack of capacity to manage property as defined in s. 744.102(11)(a) ~~s. 744.102(10)(a)~~, the durable power of attorney is exercisable upon the delivery of affidavits in paragraphs (4)(c) and (d) to the third party.

(4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS; AFFIDAVITS.—

(b) Any third party may rely upon the authority granted in a durable power of attorney that is conditioned on the principal’s lack of capacity to manage property as defined in s. 744.102(11)(a) ~~s. 744.102(10)(a)~~ only after receiving the affidavits provided in paragraphs (c) and (d), and such reliance shall end when the third party has received notice as provided in subsection (5).

(d) A determination that a principal lacks the capacity to manage property as defined in s. 744.102(11)(a) ~~s. 744.102(10)(a)~~ must be made and evidenced by the affidavit of a physician licensed to practice medicine pursuant to chapters 458 and 459 as of the date of the affidavit. A judicial determination that the principal lacks the capacity to manage property pursuant to chapter 744 is not required prior to the determination by the physician and the execution of the affidavit. For purposes of this section, the physician executing the affidavit must be the primary physician who has responsibility for the treatment and care of the principal. The affidavit executed by a physician must state where the physician is licensed to practice medicine, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property as defined in s. 744.102(11)(a) ~~s. 744.102(10)(a)~~. The affidavit may, but need not, be in the following form:

STATE OF.....
COUNTY OF.....

Before me, the undersigned authority, personally appeared ...(name of physician)..., Affiant, who swore or affirmed that:

1. Affiant is a physician licensed to practice medicine in ...(name of state, territory, or foreign country)....

2. Affiant is the primary physician who has responsibility for the treatment and care of ...(principal's name)....

3. To the best of Affiant's knowledge after reasonable inquiry, Affiant believes that the principal lacks the capacity to manage property, including taking those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

.....
...(Affiant)...

Sworn to (or affirmed) and subscribed before me this ...(day of)..
...(month)...., ...(year)...., by ...(name of person making statement)...

...(Signature of Notary Public-State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

...(Type of Identification Produced)...

(f) A third party may not rely on the authority granted in a durable power of attorney conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(11)(a) ~~s. 744.102(10)(a)~~ when any affidavit presented has been executed more than 6 months prior to the first presentation of the durable power of attorney to the third party.

Section 17. Subsection (3) of 744.1085, Florida Statutes, is amended to read:

744.1085 Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian defined in s. 744.102(16) ~~s. 744.102(15)~~ and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education must be completed through a course approved or offered by the State-wide Public Guardianship Office. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

Section 18. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2004.

Approved by the Governor May 28, 2004.

Filed in Office Secretary of State May 28, 2004.