

House Bill No. 457

An act relating to guardianship; amending s. 744.102, F.S.; defining the terms “audit” and “surrogate guardian”; amending s. 744.1083, F.S.; revising provisions relating to identification information provided by professional guardians for registration; authorizing revocation or suspension of a professional guardian’s registration; providing that the Statewide Public Guardianship Office need not review credit and criminal investigations from a state college or university before registering the institution as a professional guardian; amending s. 744.301, F.S.; providing that in the event of death, the surviving parent is the sole natural guardian of a minor; prohibiting a natural guardian from using the property of the ward for the guardian’s benefit without a court order; creating s. 744.3025, F.S.; authorizing a court to appoint a guardian ad litem to represent a minor’s interest in certain claims that exceed a specified amount; requiring a court to appoint a guardian ad litem to represent a minor’s interest in certain claims that exceed a specified amount; providing that a court need not appoint a guardian ad litem under certain circumstances; requiring a court to award reasonable fees and costs to the guardian ad litem; amending s. 744.3031, F.S.; increasing the time an emergency temporary guardian may serve; increasing the time of an extension; requiring an emergency temporary guardian to file a final report; providing for the contents of the final report; amending s. 744.304, F.S.; specifying the persons who may file a petition for a standby guardian; requiring that notice of the appointment hearing be served on the ward’s next of kin; clarifying when a standby guardian may assume the duties of guardian; requiring that each standby guardian submit to credit and criminal history record checks; amending s. 744.3115, F.S.; defining the term “health care decision”; amending s. 744.3135, F.S.; providing procedures for completing a guardian’s criminal history record check; authorizing a guardian to use electronic fingerprinting equipment that is available for criminal history record checks of public employees; providing that a guardian need not be rescreened if he or she uses certain electronic fingerprinting equipment; providing for fees; requiring the Statewide Public Guardianship Office to request that the Department of Law Enforcement forward certain fingerprints to the Federal Bureau of Investigation; requiring the Statewide Public Guardianship Office to adopt a rule for credit investigations of guardians; amending s. 744.3145, F.S.; reducing the time in which a guardian must complete the education courses; amending s. 744.3215, F.S.; providing that an incapacitated person retains the right to receive services and rehabilitation necessary to maximize the quality of the person’s life; revising provisions relating to rights that may be removed from a person determined incapacitated; amending s. 744.331, F.S.; requiring that the court appoint an attorney for an alleged incapacitated person from a specified registry; requiring attorneys to complete certain training programs; providing that a member of the examining committee may not be related

to or associated with certain persons; prohibiting a person who served on an examining committee from being appointed as the guardian; requiring each member of an examining committee to file an affidavit stating that he or she has completed or will timely complete the mandatory training; providing for training programs; requiring each member to file a report regarding his or her examination of an alleged incapacitated person; providing for dismissal of a petition alleging incapacity based on the reports of the majority of the committee members; providing for an award of attorney's fees; amending s. 744.341, F.S.; requiring the voluntary guardian to include certain information in the annual report; amending s. 744.361, F.S.; requiring a professional guardian to ensure that each of his or her wards is personally visited at least quarterly; providing for the assessment of certain conditions during the personal visit; providing an exemption; amending s. 744.365, F.S.; requiring that the verified inventory include information on any trust to which a ward is a beneficiary; amending s. 744.367, F.S.; requiring that the annual report of the guardian filing on a calendar-year basis be filed on or before a specified date; exempting all minor wards from service of the annual report; amending s. 744.3675, F.S.; requiring that the annual guardianship plan include information on the mental condition of the ward; providing for an annual guardianship plan for wards who are minors; amending s. 744.3678, F.S.; providing that property of the ward which is not under the control of the guardian, including certain trusts, is not subject to annual accounting; requiring certain documentation for the annual accounting; amending s. 744.3679, F.S.; removing a provision prohibiting the clerk of the court from having responsibility for monitoring or auditing accounts in certain cases; amending s. 744.368, F.S.; requiring that the verified inventory and the accountings be audited within a specified time period; amending s. 744.441, F.S.; requiring the court to retain oversight for assets of a ward transferred to a trust; creating s. 744.442, F.S.; providing that a guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act; requiring the surrogate guardian to be a professional guardian; providing the procedures to be used in appointing a surrogate guardian; providing the duties of a surrogate guardian; requiring the guardian to be liable for the acts of the surrogate guardian; authorizing the guardian to terminate the services of the surrogate guardian by filing a written notice of the termination with the court; amending s. 744.464, F.S.; removing the state attorney from the list of persons to be served a notice of a hearing on restoration of capacity; removing a time limitation on the filing of a suggestion of capacity; amending s. 744.474, F.S.; revising provisions relating to removal of a guardian who is not a family member; revising provisions relating to removal of a guardian upon a showing that removal of the current guardian is in the best interest of the ward; amending s. 744.511, F.S.; providing that a ward who is a minor need not be served with the final report of a removed guardian; amending s. 744.527, F.S.; providing that final reports for a deceased ward be filed at a specified time; amending s. 744.528, F.S.; providing for a notice of the hearing for objections to a report filed by a

guardian; amending s. 744.708, F.S.; revising provisions relating to audits and investigations of each office of public guardian; requiring a public guardian to ensure that each of his or her wards is personally visited at least quarterly; providing for the assessment of certain conditions during the personal visit; providing for additional distribution of a specified annual report; deleting a definition; amending s. 765.101, F.S.; redefining the term “health care decision” to include informed consent for mental health treatment services; amending ss. 121.091, 121.4501, 709.08, and 744.1085, F.S.; conforming cross-references; reenacting s. 117.107(4), F.S., relating to prohibited acts of a notary public, to incorporate the amendment made to s. 744.3215, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 744.102, Florida Statutes, is amended to read:

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

(1) “Attorney for the alleged incapacitated person” means an attorney who represents the alleged incapacitated person. ~~The~~ Such attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating ~~The~~ Florida Bar.

(2) “Audit” means a systematic review of financial and all other documents to ensure compliance with s. 744.368, rules of court, and local procedures using generally accepted accounting principles.

~~(3)~~(2) “Clerk” means the clerk or deputy clerk of the court.

~~(4)~~(3) “Corporate guardian” means a corporation authorized to exercise fiduciary or guardianship powers in this state and includes a nonprofit corporate guardian.

~~(5)~~(4) “Court” means the circuit court.

~~(6)~~(5) “Court monitor” means a person appointed by the court under ~~pursuant to~~ s. 744.107 to provide the court with information concerning a ward.

~~(7)~~(6) “Estate” means the property of a ward subject to administration.

~~(8)~~(7) “Foreign guardian” means a guardian appointed in another state or country.

~~(9)~~(8) “Guardian” means a person who has been appointed by the court to act on behalf of a ward’s person or property, or both.

(a) “Limited guardian” means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or

property, or after the person has voluntarily petitioned for appointment of a limited guardian.

(b) “Plenary guardian” means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

~~(10)~~(9) “Guardian ad litem” means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.

~~(11)~~(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.

~~(12)~~(11) “Incapacitated person” means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the ~~such~~ person.

(a) To “manage property” means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(b) To “meet essential requirements for health or safety” means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.

~~(13)~~(12) “Minor” means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

~~(14)~~(13) “Next of kin” means those persons who would be heirs at law of the ward or alleged incapacitated person if the ~~such~~ person were deceased and includes the lineal descendants of the ~~such~~ ward or alleged incapacitated person.

~~(15)~~(14) “Nonprofit corporate guardian” means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

~~(16)~~(15) “Preneed guardian” means a person named in a written declaration to serve as guardian in the event of the incapacity of the declarant as provided in s. 744.3045.

~~(17)~~(16) “Professional guardian” means any guardian who ~~receives or has at any time received compensation for services rendered~~ services to three or more ~~than two~~ wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

~~(18)~~(17) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership.

~~(19)~~(18) “Standby guardian” means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian.

~~(20)~~ “Surrogate guardian” means a guardian designated according to s. 744.442.

~~(21)~~(19) “Totally incapacitated” means incapable of exercising any of the rights enumerated in s. 744.3215(2) and (3).

~~(22)~~(20) “Ward” means a person for whom a guardian has been appointed.

Section 2. Subsections (3), (5), (7), and (10) of section 744.1083, Florida Statutes, are amended to read:

744.1083 Professional guardian registration.—

(3) Registration must include the following:

(a) Sufficient information to identify the professional guardian, as follows:

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

~~2.(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 entity 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.

~~(b)~~(e) Documentation that the bonding and educational requirements of s. 744.1085 have been met.

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

(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 a guardian who is currently registered with the office violates a provision of this chapter, the executive director of the office may suspend or revoke the guardian's registration. If the executive director denies registration to a professional guardian or suspends or revokes a professional guardian's registration, the Statewide Public Guardianship Office must send written notification of the denial, suspension, or revocation to the chief judge of each judicial circuit in which the guardian was serving on the day of the office's decision to deny, suspend, or revoke the registration.

(7) 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 not 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 not apply and the registration must 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)(b)(e).

(10) A state college or university or an independent college or university described in s. 1009.98(3)(a), may, but is not 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 subsections (3) and (4) ~~subsection (3)~~ do not apply and the registration must include only the name, address, and employer identification number of the registrant.

Section 3. Section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.—

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship belongs shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both ~~shall~~ continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) ~~The Natural guardian or guardians~~ are authorized, on behalf of any of their minor children, to:

(a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children;

(b) Collect, receive, manage, and dispose of the proceeds of any such settlement;

(c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or owner,

without appointment, authority, or bond, when the amounts received, in the aggregate, do amount involved in any instance does not exceed \$15,000.

(3) All instruments executed by a natural guardian for the benefit of the ward under the powers specified provided for in subsection (2) shall be binding on the ward. The natural guardian may not, without a court order, use the property of the ward for the guardian's benefit or to satisfy the guardian's support obligation to the ward.

~~(4)(a) — In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor exceeds \$15,000, the court may, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a minor equals or exceeds \$25,000, the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.~~

~~(b) — Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.~~

Section 4. Section 744.3025, Florida Statutes, is created to read:

744.3025 Claims of minors.—

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage,

wrongful death, or other cause of action in which the gross settlement of the claim exceeds \$15,000.

(b) The court shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds \$50,000.

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

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

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

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

Section 5. Subsection (3) of section 744.3031, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

744.3031 Emergency temporary guardianship.—

(3) The authority of an emergency temporary guardian expires 90 ~~60~~ days after the date of appointment or when a guardian is appointed, whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional 90 ~~30~~ days upon a showing that the emergency conditions still exist.

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

(b) If an emergency temporary guardian is a guardian for the property, the final report must consist of a verified inventory of the property, as provided in s. 744.365, as of the date the letters of emergency temporary guardianship were issued, a final accounting that gives a full and correct account of the receipts and disbursements of all the property of the ward over which the guardian had control, and a statement of the property of the ward on hand at the end of the emergency temporary guardianship. If the emergency temporary guardian becomes the successor guardian of the property, the final report must satisfy the requirements of the initial guardianship report for the guardian of the property as provided in s. 744.362.

(c) If the emergency temporary guardian is a guardian of the person, the final report must summarize the activities of the temporary guardian with regard to residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward to the extent of the authority granted to the temporary guardian in the letters of guardianship. If the emergency temporary guardian becomes the successor guardian of the

person, the report must satisfy the requirements of the initial report for a guardian of the person as stated in s. 744.362.

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

Section 6. Section 744.304, Florida Statutes, is amended to read:

744.304 Standby guardianship.—

(1) Upon a petition by the natural guardians or a guardian appointed under s. 744.3021, the court may appoint a standby guardian of the person or property of a minor or consent of both parents, natural or adoptive, if living, or of the surviving parent, a standby guardian of the person or property of a minor may be appointed by the court. The court may also appoint an alternate to the guardian to act if the standby guardian does not serve or ceases to serve after appointment. Notice of a hearing on the petition must be served on the parents, natural or adoptive, and on any guardian currently serving unless the notice is waived in writing by them or waived by the court for good cause shown shall renounce, die, or become incapacitated after the death of the last surviving parent of the minor.

(2) Upon petition of a currently serving guardian, a standby guardian of the person or property of an incapacitated person may be appointed by the court. Notice of the hearing shall be served on the ward's next of kin.

(3) The standby guardian or alternate shall be empowered to assume the duties of guardianship his or her office immediately on the death, removal, or resignation of the guardian of a minor, or on the death or adjudication of incapacity of the last surviving natural guardian or adoptive parent of a minor, or upon the death, removal, or resignation of the guardian for an adult. ~~The; however, such a guardian of the ward's property may not be empowered to deal with the ward's property, other than to safeguard it, before prior to issuance of letters of guardianship.~~ If the ward incapacitated person is over the age of 18 years, the court shall conduct a hearing as provided in s. 744.331 before confirming the appointment of the standby guardian, unless the ward has previously been found to be incapacitated.

(4) Within 20 days after assumption of duties as guardian, a standby guardian shall petition for confirmation of appointment. If the court finds the standby guardian to be qualified to serve as guardian under pursuant to ss. 744.309 and 744.312, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with s. 744.347, and shall file a bond, and shall submit to a credit and a criminal history record check as set forth in s. 744.3135, if required. Letters of guardianship must then be issued in the manner provided in s. 744.345.

(5) After the assumption of duties by a standby guardian, the court shall have jurisdiction over the guardian and the ward.

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

744.3115 Advance directives for health care.—In each proceeding in which a guardian is appointed under this chapter, the court shall determine

whether the ward, prior to incapacity, has executed any valid advance directive ~~under pursuant to~~ chapter 765. If any such advance directive exists, the court shall specify in its order and letters of guardianship what authority, if any, the guardian shall exercise over the surrogate. Pursuant to the grounds listed in s. 765.105, the court, upon its own motion, may, with notice to the surrogate and any other appropriate parties, modify or revoke the authority of the surrogate to make health care decisions for the ward. For purposes of this section, the term "health care decision" has the same meaning as in s. 765.101.

Section 8. Section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.—

(1) 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. If a credit or criminal history record check is required, the court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening as set forth in s. 435.03. The court shall consider the results of any investigation when reappointing a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian must pay the clerk of the court a fee of up to \$7.50 for handling and processing professional guardian files.

(2) The court and the Statewide Public Guardianship Office shall accept the satisfactory completion of a criminal history record check by any method described in this subsection. A guardian satisfies the requirements of this section by undergoing:

(a) An electronic fingerprint criminal history record check. A guardian may use any electronic fingerprinting equipment used for criminal history record checks of public employees. The guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal history record check. The agency that operates the equipment used by the guardian may charge the guardian an additional fee, not to exceed \$10, for the use of the equipment. The agency completing the record check must immediately send the results of the criminal history record check to the clerk of the court and the Statewide Public Guardianship Office. The clerk of the court shall maintain the results in the guardian's file and shall make the results available to the court; or

(b) A criminal history record check using a fingerprint card. 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 card criminal history record checks shall be forwarded to the clerk of the court who shall maintain the results in the guardian's a-guardian file and shall make the results available to the court and the Statewide Public Guardianship Office.

(3)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 2 background screening as set forth in s. 435.04 before and at least once every 5 years after the date the guardian is appointed. A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 1 background screening as set forth in s. 435.03 at least once every 2 years after the date the guardian is appointed. However, a person is not required to resubmit fingerprints for a criminal history record check if he or she has been screened using electronic fingerprinting equipment and the fingerprints are retained by the Department of Law Enforcement in order to notify the clerk of the court of any crime charged against the person in this state or elsewhere, as appropriate.

(b) Effective December 15, 2006, all fingerprints electronically submitted to the Department of Law Enforcement under this section shall be retained by the Department of Law Enforcement in a manner provided by rule and entered in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered in the Criminal Justice Information Program under s. 943.051.

(c) Effective December 15, 2006, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b). Any arrest record that is identified with the fingerprints of a person described in this paragraph must be reported to the clerk of court. The clerk of court must forward any arrest record received for a professional guardian to the Statewide Public Guardianship Office within 5 days. Each guardian who elects to submit fingerprint information electronically shall participate in this search process by paying an annual fee to the Statewide Public Guardianship Office of the Department of Elderly Affairs and by informing the clerk of court and the Statewide Public Guardianship Office of any change in the status of his or her guardianship appointment. The amount of the annual fee to be imposed for performing these searches and the procedures for the retention of guardian fingerprints and the dissemination of search results shall be established by rule of the Department of Law Enforcement. At least once every 5 years, the Statewide Public Guardianship Office must request that the Department of Law Enforcement forward the fingerprints maintained under this section to the Federal Bureau of Investigation.

(4)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's appointment.

(b) The Statewide Public Guardianship Office shall adopt a rule detailing the acceptable methods for completing a credit investigation under this section. If appropriate, the Statewide Public Guardianship Office may administer credit investigations. If the office chooses to administer the credit investigation, the office may adopt a rule setting a fee, not to exceed \$25, to reimburse the costs associated with the administration of a credit investigation.

(5) The Statewide Public Guardianship Office may inspect at any time the results of any credit or criminal history record check of a public or professional guardian conducted under this section. The office shall maintain copies of the credit or criminal history record check results in the guardian's registration file. If the results of a credit or criminal investigation of a public or professional guardian have not been forwarded to the Statewide Public Guardianship Office by the investigating agency, the clerk of the court shall forward copies of the results of the investigations to the office upon receiving them. If credit or criminal investigations are required, the court must consider the results of the investigations before appointing a guardian. Professional guardians and all employees of a professional guardian who have a fiduciary responsibility to a ward, so appointed, must re-submit, 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.~~

(6)(2) The requirements of this section do does not apply to a professional guardian, or to the employees of a professional guardian, that which 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 9. Subsection (4) of section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.—

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within 4 months ~~1 year~~ after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

Section 10. Paragraph (i) of subsection (1) and subsection (2) of section 744.3215, Florida Statutes, are amended to read:

744.3215 Rights of persons determined incapacitated.—

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

(i) To receive ~~necessary~~ services and rehabilitation necessary to maximize the quality of life.

(2) Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

(a) To marry. If the right to enter into a contract has been removed, the right to marry is subject to court approval.

(b) To vote.

(c) To personally apply for government benefits.

(d) To have a driver's license.

(e) To travel.

(f) To seek or retain employment.

Section 11. Subsections (2), (3), and (4), paragraph (a) of subsection (5), and subsection (7) of section 744.331, Florida Statutes, are amended to read:

744.331 Procedures to determine incapacity.—

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

(a) When a court appoints an attorney for an alleged incapacitated person, the court must appoint an attorney who is included in the attorney registry compiled pursuant to ss. 27.40 and 27.42 by the circuit's Article V indigent services committee. Appointments must be made on a rotating basis, taking into consideration conflicts arising under this chapter.

~~(b)~~(a) The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.

~~(c)~~(b) Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

(d) Effective January 1, 2007, an attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years.

(3) EXAMINING COMMITTEE.—

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician. Members of the examining committee may not be related to or associated with one another, ~~or with the petitioner, with counsel for the petitioner or the proposed guardian, or with~~ the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The clerk of the court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.

(b) A person who has been appointed to serve as a member of an examining committee to examine an alleged incapacitated person may not thereafter be appointed as a guardian for the person who was the subject of the examination.

(c) Each person appointed to an examining committee must file an affidavit with the court stating that he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare a list of persons qualified to be members of an examining committee.

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the Statewide Public Guardianship Office, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate and Trust Law sections of The Florida Bar; the Florida State Guardianship Association; and the Florida Guardianship Foundation. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet

or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

(e)(b) Each member of the examining committee shall examine the person. ~~Each~~ The examining committee member must ~~shall~~ determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each ~~the~~ examining committee member must ~~shall~~ have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee must ~~shall~~ submit a report within 15 days after appointment.

(f)(e) The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by each ~~the~~ examining committee member as part of his or her ~~its~~ written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;
2. A mental health examination; and
3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(g)(d) Each committee member's ~~The committee's~~ written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.

2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.

3. The results of the comprehensive examination and the committee member's ~~members~~ assessment of information provided by the attending or family physician, if any.

4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.

5. The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged

incapacitated person, the report must include the response and the name of the person supplying the answer.

6.5- The signature of each member of the committee member and the date and time the member conducted his or her examination.

(h)(e) A copy of each committee member's the report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(4) DISMISSAL OF PETITION.—If a majority of the examining committee members conclude ~~concludes~~ that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.

(5) ADJUDICATORY HEARING.—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The date for the adjudicatory hearing must be set no more than 14 days after the filing of the reports ~~report~~ of the examining committee members, unless good cause is shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

(7) FEES.—

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the ~~such~~ payments.

(c) If the petition is dismissed, costs and attorney's fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.

Section 12. Subsection (4) of section 744.341, Florida Statutes, is renumbered as subsection (5) and a new subsection (4) is added to that section to read:

744.341 Voluntary guardianship.—

(4) A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward not more than 90 days before the annual report is filed with the court. The certificate must certify that the ward is competent to understand the nature of the guardian-

ship and of the ward's authority to delegate powers to the voluntary guardian.

Section 13. Subsection (9) is added to section 744.361, Florida Statutes, to read:

744.361 Powers and duties of guardian.—

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

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

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

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

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

Section 14. Subsection (2) of section 744.365, Florida Statutes, is amended to read:

744.365 Verified inventory.—

(2) CONTENTS.—The verified inventory must include the following:

(a) All property of the ward, real and personal, that has come into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any item, any claims against the property, ~~and any cause of action accruing to the ward, and any trusts of which the ward is a beneficiary.;~~

(b) The location of the real and personal property in sufficient detail so that it may be clearly identified or located. ~~;~~ ~~and~~

(c) A description of all sources of income, including, without limitation, social security benefits and pensions.

Section 15. Subsections (1) and (3) of section 744.367, Florida Statutes, are amended to read:

744.367 Duty to file annual guardianship report.—

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after the last day of the anniversary month the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires

calendar-year filing, the guardianship plan must be filed on or before April 1 of each year ~~within 90 days after the end of the calendar year.~~

(3) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person ~~of an incapacitated person~~ must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor ~~under the age of 14 years~~ or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Section 16. Section 744.3675, Florida Statutes, is amended to read:

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

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

(a) Information concerning the residence of the ward, including:

1. The ward's address at the time of filing the plan.;
2. The name and address of each place where the ward was maintained during the preceding year.;
3. The length of stay of the ward at each place.;
4. A statement of whether the current residential setting is best suited for the current needs of the ward.;

5. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.

(b) Information concerning the medical and mental health conditions ~~condition~~ and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.;
2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. ~~The~~ Such report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward.;
3. The plan for providing ~~provision~~ of medical, mental health, and rehabilitative services in the coming year.

(c) Information concerning the social condition of the ward, including:

1. The social and personal services currently used ~~utilized~~ by the ward.;

2. The social skills of the ward, including a statement of how well the ward communicates and maintains interpersonal relationships, with others;

~~3. A description of the ward's activities at communication and visitation; and~~

3.4. The social needs of the ward.

(2) Each plan filed by the legal guardian of a minor must include:

(a) Information concerning the residence of the minor, including:

1. The minor's address at the time of filing the plan.

2. The name and address of each place the minor lived during the preceding year.

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the minor, including:

1. A resume of any professional medical treatment given to the minor during the preceding year.

2. A report from the physician who examined the minor no more than 180 days before the beginning of the applicable reporting period that contains an evaluation of the minor's physical and mental conditions.

3. The plan for providing medical services in the coming year.

(c) Information concerning the education of the minor, including:

1. A summary of the school progress report.

2. The social development of the minor, including a statement of how well the minor communicates and maintains interpersonal relationships.

3. The social needs of the minor.

~~(3)(2)~~ Each plan for an adult ward must address the issue of restoration of rights to the ward and include:

(a) A summary of activities during the preceding year ~~that which~~ were designed to enhance ~~increase~~ the capacity of the ward.;

(b) A statement of whether the ward can have any rights restored.; ~~and~~

(c) A statement of whether restoration of any rights will be sought.

~~(4)(3)~~ The court, in its discretion, may require reexamination of the ward by a physician at any time.

Section 17. Subsections (2) and (3) of section 744.3678, Florida Statutes, are amended to read:

744.3678 Annual accounting.—

(2) The annual accounting must include:

(a) A full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. This paragraph does not apply to any property or any trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.

(b) A copy of the annual or year-end statement of all of the ward's cash accounts from each of the institutions where the cash is deposited.

(3) The guardian must obtain a receipt, ~~or canceled check, or other proof of payment~~ for all expenditures and disbursements made on behalf of the ward. The guardian must preserve all evidence of payment ~~the receipts and canceled checks~~, along with other substantiating papers, for a period of 3 years after his or her discharge. The receipts, proofs of payment ~~checks~~, and substantiating papers need not be filed with the court but shall be made available for inspection and review at ~~the such time and in such place and before the such persons as the court may from time to time order.~~

Section 18. Section 744.3679, Florida Statutes, is amended to read:

744.3679 Simplified accounting procedures in certain cases.—

(1) In a guardianship of property, when all assets of the estate are in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits ~~from a pursuant to~~ settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution; and

(b) A statement by the guardian under penalty of perjury that the guardian has custody and control of the ward's property as shown in the year-end statement.

~~(2) The clerk has no responsibility to monitor or audit the accounts and may not accept a fee for doing so.~~

~~(2)(3)~~ The accounting allowed by subsection (1) is in lieu of the accounting and auditing procedures under s. 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party may seek judicial review as provided in s. 744.3685.

~~(3)(4)~~ The guardian need not be represented by an attorney in order to file the annual accounting allowed by subsection (1).

Section 19. Subsection (3) of section 744.368, Florida Statutes, is amended to read:

744.368 Responsibilities of the clerk of the circuit court.—

(3) Within 90 days after the filing of the verified inventory and accountings initial or annual guardianship report by a guardian of the property, the clerk shall audit the verified inventory and ~~or~~ the accountings annual accounting. The clerk shall advise the court of the results of the audit.

Section 20. Subsection (19) of section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

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

Section 21. Section 744.442, Florida Statutes, is created to read:

744.442 Delegation of authority.—

(1) A guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act. A person designated as a surrogate guardian under this section must be a professional guardian.

(2)(a) A guardian must file a petition with the court requesting permission to designate a surrogate guardian.

(b) If the court approves the designation, the order must specify the name and business address of the surrogate guardian and the duration of appointment, which may not exceed 30 days. The court may extend the appointment for good cause shown. The surrogate guardian may exercise all powers of the guardian unless limited by order of the court. The surrogate guardian must file with the court an oath swearing or affirming that he or she will faithfully perform the duties delegated. The court may require the surrogate guardian to post a bond.

(3) This section does not limit the responsibility of the guardian to the ward and to the court. The guardian is liable for the acts of the surrogate guardian. The guardian may terminate the authority of the surrogate guardian by filing a written notice of the termination with the court.

(4) The surrogate guardian is subject to the jurisdiction of the court as if appointed to serve as guardian.

Section 22. Paragraphs (c), (e), and (f) of subsection (2) and subsection (4) of section 744.464, Florida Statutes, are amended to read:

744.464 Restoration to capacity.—

(2) SUGGESTION OF CAPACITY.—

(c) The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, ~~the state attorney~~, and any other interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.

(e) If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.

(f) Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward's attorney, the guardian, ~~the state attorney~~, the ward's next of kin, and any other interested persons as directed by the court.

~~(4) TIME LIMITATION FOR FILING SUGGESTION OF CAPACITY.— Notwithstanding this section, a suggestion of capacity may not be filed within 90 days after an adjudication of incapacity or denial of restoration, unless good cause is shown.~~

Section 23. Paragraph (a) of subsection (19) of section 744.474, Florida Statutes, is amended, and paragraph (b) of that subsection is redesignated as subsection (20) of that section and amended, to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(19) Upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice is required, or who is related to the ward within the relationships specified for nonresident relatives in ss. 744.309(2) and 744.312(2) and who has not previously been rejected by the court as a guardian that:

(a) the current guardian is not a family member; and subsection (20) applies.

(20)(b) Upon a showing that removal of the current guardian is in the best interest of the ward. In determining whether a guardian who is related by blood or marriage to the ward is to be removed, there shall be a rebuttable presumption that the guardian is acting in the best interests of the ward,

~~the court may remove the current guardian and appoint the petitioner, or such person as the court deems in the best interest of the ward, either as guardian of the person or of the property, or both.~~

Section 24. Section 744.511, Florida Statutes, is amended to read:

744.511 Accounting upon removal.—A removed guardian shall file with the court a true, complete, and final report of his or her guardianship within

20 days after removal and shall serve a copy on the successor guardian and the ward, unless the ward is a minor under 14 years of age or has been determined to be totally incapacitated.

Section 25. Section 744.527, Florida Statutes, is amended to read:

744.527 Final reports and application for discharge; hearing.—

(1) When the court terminates the guardianship for any of the reasons set forth in s. 744.521, the guardian shall promptly file his or her final report. If the ward has died, the guardian must file a final report with the court no later than 45 days after he or she has been served with letters of administration or letters of curatorship. If no objections are filed and if it appears that the guardian has made full and complete distribution to the person entitled and has otherwise faithfully discharged his or her duties, the court shall approve the final report. If objections are filed, the court shall conduct a hearing in the same manner as provided for a hearing on objections to annual guardianship reports.

(2) The guardian applying for discharge ~~may is authorized to~~ retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees regardless of the death of the ward, accruing between the filing of his or her final returns and the order of discharge.

Section 26. Subsection (3) of section 744.528, Florida Statutes, is amended to read:

744.528 Discharge of guardian named as personal representative.—

(3) Any interested person may file a notice of The court shall set a hearing on any objections filed by the beneficiaries. Notice of the hearing must shall be served upon the guardian, beneficiaries of the ward's estate, and any other person to whom the court directs service. If a notice of hearing on the objections is not served within 90 days after filing of the objections, the objections are deemed abandoned.

Section 27. Subsections (5) through (8) of section 744.708, Florida Statutes, are amended to read:

744.708 Reports and standards.—

(5)(a) Each office of public guardian shall undergo an independent audit by a qualified certified public accountant shall be performed at least once every 2 years. The audit should include an investigation into the practices of the office for managing the person and property of the wards. A copy of the audit report shall be submitted to the Statewide Public Guardianship Office.

(b) In addition to regular monitoring activities, the Statewide Public Guardianship Office shall conduct an investigation into the practices of each office of public guardian related to the managing of each ward's personal affairs and property. When feasible, the investigation required under this

paragraph shall be conducted in conjunction with the financial audit of each office of public guardian under paragraph (a).

(c) In addition, ~~each the~~ office of public guardian shall be subject to audits or examinations by the Auditor General and the Office of Program Policy Analysis and Government Accountability pursuant to law.

(6) A The public guardian shall ensure that each of the guardian's wards is personally visited ward is seen by the public guardian or by one of the guardian's a professional staff person at least once each calendar quarter four times a year. During this personal visit, the public guardian or the professional staff person shall assess:

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

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

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

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. The Statewide Public Guardianship Office may increase or decrease the ratio after consultation with the local public guardian and the chief judge of the circuit court. The basis of the decision to increase or decrease the prescribed ratio shall be reported in the annual report to the Secretary of Elderly Affairs, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

~~(8) The term "professional," for purposes of this part, shall not include the public guardian nor the executive director of the Statewide Public Guardianship Office. The term "professional" shall be limited to those persons who exercise direct supervision of individual wards under the direction of the public guardian.~~

Section 28. Paragraph (a) of subsection (5) of section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.—As used in this chapter:

(5) "Health care decision" means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

Section 29. 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 the such person is no longer a minor or an incapacitated person as defined in s. 744.102(11) and (12).

Section 30. Paragraph (c) of subsection (20) of section 121.4501, Florida Statutes, is amended to read:

121.4501 Public Employee Optional Retirement Program.—

(20) DESIGNATION OF BENEFICIARIES.—

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

Section 31. 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(12)(11)(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(12)(11)(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(12)(11)(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(12)(11)(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 thisday 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(12)(11)(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 32. Subsection (3) of section 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(~~17~~)(16) 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 Statewide 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 33. For the purpose of incorporating the amendment made by this act to section 744.3215, Florida Statutes, in a reference thereto, subsection (4) of section 117.107, Florida Statutes, is reenacted to read:

117.107 Prohibited acts.—

(4) A notary public may not take the acknowledgment of or administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), and where the person has not been restored to capacity as a matter of record.

Section 34. This act shall take effect July 1, 2006.

Approved by the Governor June 12, 2006.

Filed in Office Secretary of State June 12, 2006.