

CHAPTER 2015-83

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 5

An act relating to guardianship proceedings; amending s. 709.2109, F.S.; requiring the filing of a motion before termination or suspension of a power of attorney in proceedings to determine a principal's incapacity or for appointment of a guardian advocate under certain circumstances; amending ss. 744.107 and 744.1075, F.S.; authorizing a court to appoint the office of criminal conflict and civil regional counsel as a court monitor in guardianship proceedings; amending s. 744.108, F.S.; providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; providing that expert testimony is not required in proceedings to determine compensation for an attorney or guardian; requiring a person offering expert testimony to provide notice to interested persons; providing that expert witness fees are recoverable by the prevailing interested person; amending s. 744.3025, F.S.; providing that a court may appoint a guardian ad litem to represent a minor if necessary to protect the minor's interest in a settlement; providing that a settlement of a minor's claim is subject to certain confidentiality provisions; amending s. 744.3031, F.S.; requiring notification of an alleged incapacitated person and such person's attorney of a petition for appointment of an emergency temporary guardian before a hearing on the petition commences; prohibiting the payment of the emergency temporary guardian's final fees and his or her final attorney fees until the final report is filed; amending s. 744.309, F.S.; providing that certain for-profit corporations may act as guardian of a person; providing conditions; requiring the posting and maintenance of a fiduciary bond; limiting liability; requiring the corporation to maintain certain insurance coverage; providing for certain grandfathered guardianships; amending s. 744.3115, F.S.; directing the court to specify authority for health care decisions with respect to a ward's advance directive; amending s. 744.312, F.S.; prohibiting a court from giving preference to the appointment of certain persons as guardians; providing requirements for the appointment of professional guardians; amending s. 744.3203, F.S.; providing grounds for filing a motion for suspension of a power of attorney before determination of incapacity; providing criteria for such motion; requiring a hearing under certain conditions; providing for the award of attorney fees and costs; amending s. 744.331, F.S.; directing the court to consider certain factors when determining incapacity; requiring that the examining committee be paid from state funds as court-appointed expert witnesses if a petition for incapacity is dismissed; requiring that a petitioner reimburse the state for such expert witness fees if the court finds the petition to have been filed in bad faith; amending s. 744.344, F.S.; providing conditions under which the court is authorized to appoint an emergency temporary guardian; amending s. 744.345, F.S.; revising provisions relating to letters of guardianship; creating s. 744.359, F.S.;

prohibiting abuse, neglect, or exploitation of a ward by a guardian; requiring reporting thereof to the Department of Children and Families central abuse hotline; providing for interpretation; amending s. 744.361, F.S.; providing additional powers and duties of a guardian; amending s. 744.367, F.S.; revising the period during which a guardian must file an annual guardianship plan with the court; amending s. 744.369, F.S.; providing for the continuance of a guardian's authority to act under an expired annual report under certain circumstances; amending s. 744.3715, F.S.; providing that an interested party may petition the court regarding a guardian's failure to comply with the duties of a guardian; amending s. 744.464, F.S.; establishing the burden of proof for determining restoration of capacity of a ward in pending guardianship cases; requiring a court to advance such cases on the calendar; providing applicability; providing an effective date.

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

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

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

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

(a) If an emergency arises after initiation of proceedings to determine incapacity and before adjudication regarding the principal's capacity, the agent may petition the court in which the proceeding is pending for authorization to exercise a power granted under the power of attorney. The petition must set forth the nature of the emergency, the property or matter involved, and the power to be exercised by the agent.

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

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

744.107 Court monitors.—

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

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

744.1075 Emergency court monitor.—

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

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

744.108 Guardian Guardian’s and attorney attorney’s fees and expenses.

(5) All petitions for guardian guardian’s and attorney attorney’s fees and expenses must be accompanied by an itemized description of the services performed for the fees and expenses sought to be recovered.

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

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

Section 5. Section 744.3025, Florida Statutes, is amended 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 a ~~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 if the court believes a guardian ad litem is necessary to protect the minor's interest.

(b) Except as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a 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.

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

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

744.3031 Emergency temporary guardianship.—

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

~~(9)(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) A court may not authorize any payment of the emergency temporary guardian's final fees or the final fees of his or her attorney until the final report is filed.

~~(c)(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.

(d)(e) 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.

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

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

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

(7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate guardian existing under the laws of this state is qualified to act as guardian of a ward if the entity is qualified to do business in the state, is wholly owned by the person who is the circuit’s public guardian in the circuit where the corporate guardian is appointed, has met the registration requirements of s. 744.1083, and posts and maintains a bond or insurance policy under paragraph (a).

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

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

addition to the bond required under s. 744.1085 but is in addition to any bonds required under s. 744.351. The expenses incurred to satisfy the bonding requirements of this section may not be paid with the assets of any ward; or

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

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

Section 8. 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 chapter 765. If any advance directive exists, the court shall specify in its order and letters of guardianship what authority, if any, the guardian shall exercise over the ward with regard to health care decisions and what authority, if any, the surrogate shall continue to exercise over the ward with regard to health care decisions 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. Any order revoking or modifying the authority of the surrogate must be supported by specific written findings of fact. If the court order provides that the guardian is responsible for making health care decisions for the ward, the guardian shall assume the responsibilities of the surrogate which are provided in s. 765.205. For purposes of this section, the term “health care decision” has the same meaning as in s. 765.101.

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

744.312 Considerations in appointment of guardian.—

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

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

- (a) Is related by blood or marriage to the ward;
- (b) Has educational, professional, or business experience relevant to the nature of the services sought to be provided;
- (c) Has the capacity to manage the financial resources involved; or
- (d) Has the ability to meet the requirements of the law and the unique needs of the individual case.

(3) The court shall also:

- (a) Consider the wishes expressed by an incapacitated person as to who shall be appointed guardian;
- (b) Consider the preference of a minor who is age 14 or over as to who should be appointed guardian;
- (c) Consider any person designated as guardian in any will in which the ward is a beneficiary.
- (d) Consider the wishes of the ward’s next of kin, when the ward cannot express a preference.

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

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

(a) In each case when a court appoints a professional guardian and does not use a rotation system for such appointment, the court must make specific findings of fact stating why the person was selected as guardian in the particular matter involved. The findings must reference each of the factors listed in subsections (2) and (3).

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

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

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

744.3203 Suspension of power of attorney before incapacity determination.—

(1) At any time during proceedings to determine incapacity but before the entry of an order determining incapacity, the authority granted under an alleged incapacitated person's power of attorney to a parent, spouse, child, or grandchild is suspended when the petitioner files a motion stating that a specific power of attorney should be suspended for any of the following grounds:

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

(b) The power of attorney is invalid.

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

(d) The agent has abused powers.

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

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

(2) The motion must:

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

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

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

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

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

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

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

744.331 Procedures to determine incapacity.—

(6) ORDER DETERMINING INCAPACITY.—If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. In determining incapacity, the court shall consider the person’s unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

1. The exact nature and scope of the person’s incapacities;
2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety;
3. The specific legal disabilities to which the person is subject; and
4. The specific rights that the person is incapable of exercising.

(b) When an order determines that a person is incapable of exercising delegable rights, the court must consider and find whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person. ~~A guardian must be appointed to exercise the incapacitated person’s delegable rights unless the court finds there is an alternative.~~ A guardian may not be appointed if the court finds there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If the court finds there is not an alternative to guardianship that sufficiently addresses the problems of the incapacitated person, a guardian must be appointed to exercise the incapacitated person’s delegable rights.

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

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

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

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

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

2. A reasonable factual basis for that belief,

the trust, trust amendment, or durable power of attorney shall not be deemed to be an alternative to the appointment of a guardian. The appointment of a guardian does not limit the court's power to determine that certain authority granted by a durable power of attorney is to remain exercisable by the agent attorney-in-fact.

(7) FEES.—

(c) If the petition is dismissed or denied;

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

2. Costs and attorney 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. The petitioner shall also reimburse the state courts system for any amounts paid under subparagraph 1. upon such a finding.

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

744.344 Order of appointment.—

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

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

744.345 Letters of guardianship.—Letters of guardianship shall be issued to the guardian and shall specify whether the guardianship pertains to the person, or the property, or both, of the ward. The letters must state whether the guardianship is plenary or limited, and, if limited, the letters must state the powers and duties of the guardian. ~~If the guardianship is limited,~~ The letters shall state whether or not and to what extent the

guardian is authorized to act on behalf of the ward with regard to any advance directive previously executed by the ward.

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

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

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

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

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

(b) Abuses his or her powers; or

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

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

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

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

744.361 Powers and duties of guardian.—

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

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

(3) The guardian shall act in good faith.

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

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

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

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

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

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

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

(a) Protect and preserve the property and invest it prudently as provided in chapter 518, apply it as provided in s. 744.397, and keep clear, distinct, and accurate records of the administration of the ward's property account for it faithfully.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(14)~~⁽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.
- (d) The nature and extent of visitation and communication with the ward’s family and friends.

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

Section 16. Subsection (1) of section 744.367, Florida Statutes, is 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 at least 60 days, but no more than ~~within~~ 90 days, before after the last day of the anniversary month that 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 for the forthcoming calendar year must be filed on or after September 1 but no later than December 1 of the current year before April 1 of each year.

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

744.369 Judicial review of guardianship reports.—

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

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

744.3715 Petition for interim judicial review.—

(1) At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan, ~~or is exceeding his or her authority under the guardianship plan, is acting in a manner contrary to s. 744.361, is denying visitation between the ward and his or her relatives in violation of s. 744.361(13), or and~~ the guardian is not acting in the best interest of the ward. The petition for review must state the nature of the objection to the guardian's action or proposed action. Upon the filing of any such petition, the court shall review the petition and act upon it expeditiously.

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

744.464 Restoration to capacity.—

(3) ORDER OF RESTORATION.—

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

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

The ward has the burden of proving by a preponderance of the evidence that the restoration of capacity is warranted.

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

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

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

Approved by the Governor June 2, 2015.

Filed in Office Secretary of State June 2, 2015.