

## CHAPTER 2017-16

### Committee Substitute for House Bill No. 399

An act relating to guardianship; amending s. 744.331, F.S.; requiring each examining committee member in a proceeding to determine incapacity to file his or her report with the clerk of the court within a specified timeframe after appointment; requiring the clerk of the court to serve each report on specified persons within a specified timeframe; requiring the clerk of the court to file a certificate of service of each report in the incapacity proceeding; revising the timeframe before the hearing on the petition within which specified parties must be served with all reports; authorizing parties to agree to waive the timeframe; authorizing the petitioner and the alleged incapacitated person to move for a continuance if service is not timely effectuated and to object to the introduction of all or any part of a report by filing and serving a written objection to admissibility on the other party within a specified timeframe; specifying that the admissibility of the report is governed by the rules of evidence; requiring that the adjudicatory hearing be conducted within a specified timeframe after the filing of the last filed report; amending s. 744.367, F.S.; increasing the time that a guardian has to file a required annual guardianship plan with the court if the court does not require filing on a calendar year basis; changing the time that a guardian has to file a required annual guardianship plan with the court if the court requires calendar-year filing; amending s. 744.3725, F.S.; eliminating the requirement that a court must first find that a ward's spouse has consented to dissolution of marriage before the court may authorize a guardian to exercise specified rights; amending s. 744.441, F.S.; removing the cap on funeral expenses that may be paid from a ward's estate; reenacting s. 744.3215(4), F.S., relating to the rights of persons determined incapacitated, to incorporate the amendment made to s. 744.3725, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraphs (e) and (h) of subsection (3) and paragraph (a) of subsection (5) of section 744.331, Florida Statutes, are amended, and paragraph (i) is added to subsection (3) of that section, to read:

744.331 Procedures to determine incapacity.—

(3) EXAMINING COMMITTEE.—

(e) Each member of the examining committee shall examine the person. Each examining committee member must determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each examining committee member must 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 file his or her report with the clerk of the court submit a report within 15 days after appointment.

(h) Within 3 days after receipt of each examining committee member's report, the clerk shall serve the report on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or United States mail, and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and attorney for the alleged incapacitated person may waive the 10 day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. If such service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing A copy of each committee member's 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.

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection.

#### (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 conducted at least 10 days, which time period may be waived, but no more than 30 days, after the filing of the last filed report of the examining committee members set no more than 14 days after the filing of the reports 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.

Section 2. 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 within 90 days after at least 60 days, but no more than 90 days, before 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 before April 1 of each year. The latest annual guardianship plan approved by the court will remain in effect until the court approves a subsequent plan after September 1 but no later than December 1 of the current year.

Section 3. Section 744.3725, Florida Statutes, is amended to read:

744.3725 Procedure for extraordinary authority.—Before the court may grant authority to a guardian to exercise any of the rights specified in s. 744.3215(4), the court must:

(1) Appoint an independent attorney to act on the incapacitated person's behalf, and the attorney must have the opportunity to meet with the person and to present evidence and cross-examine witnesses at any hearing on the petition for authority to act;

(2) Receive as evidence independent medical, psychological, and social evaluations with respect to the incapacitated person by competent professionals or appoint its own experts to assist in the evaluations;

(3) Personally meet with the incapacitated person to obtain its own impression of the person's capacity, so as to afford the incapacitated person the full opportunity to express his or her personal views or desires with respect to the judicial proceeding and issue before the court;

(4) Find by clear and convincing evidence that the person lacks the capacity to make a decision about the issue before the court and that the incapacitated person's capacity is not likely to change in the foreseeable future; and

(5) Be persuaded by clear and convincing evidence that the authority being requested is in the best interests of the incapacitated person; and

~~(6) In the case of dissolution of marriage, find that the ward's spouse has consented to the dissolution.~~

The provisions of this section and s. 744.3215(4) are procedural and do not establish any new or independent right to or authority over the termination of parental rights, dissolution of marriage, sterilization, abortion, or the termination of life support systems.

Section 4. Subsection (16) 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:

(16) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward’s estate, ~~up to a maximum of \$6,000.~~

Section 5. For the purpose of incorporating the amendment made by this act to section 744.3725, Florida Statutes, in a reference thereto, subsection (4) of section 744.3215, Florida Statutes, is reenacted to read:

744.3215 Rights of persons determined incapacitated.—

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

(a) Commit the ward to a facility, institution, or licensed service provider without formal placement proceeding, pursuant to chapter 393, chapter 394, or chapter 397.

(b) Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure or to the participation by the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if:

1. It is of direct benefit to, and is intended to preserve the life of or prevent serious impairment to the mental or physical health of the ward; or

2. It is intended to assist the ward to develop or regain his or her abilities.

(c) Initiate a petition for dissolution of marriage for the ward.

(d) Consent on behalf of the ward to termination of the ward’s parental rights.

(e) Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.

Section 6. This act shall take effect July 1, 2017.

Approved by the Governor May 9, 2017.

Filed in Office Secretary of State May 9, 2017.