

## CHAPTER 2015-112

### Committee Substitute for Committee Substitute for House Bill No. 437

An act relating to guardians for dependent children who are developmentally disabled or incapacitated; providing a short title; amending s. 39.6251, F.S.; requiring the continued review of the necessity of guardianships for young adults; amending s. 39.701, F.S.; requiring an updated case plan developed in a face-to-face conference with the child, if appropriate, and other specified persons; providing requirements for the Department of Children and Families when a court determines that there is a good faith basis to appoint a guardian advocate, limited guardian, or plenary guardian for the child and that no less restrictive decisionmaking assistance will meet the child's needs; requiring the department to provide specified information if another interested party or participant initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child; requiring that proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian be conducted in a separate proceeding in guardianship court; amending s. 393.12, F.S.; providing that the guardianship court has jurisdiction over proceedings for appointment of a guardian advocate if petitions are filed for certain minors who are subject to chapter 39, F.S., proceedings if such minors have attained a specified age; providing that such minor has the same due process rights as certain adults; providing requirements for when an order appointing a guardian advocate must be issued; providing that proceedings seeking appointment of a guardian advocate for certain minors be conducted separately from any other proceeding; amending s. 744.301, F.S.; providing that if a child is subject to proceedings under chapter 39, F.S., the parents may act as natural guardians unless the court finds that it is not in the child's best interests or their parental rights have been terminated; amending s. 744.3021, F.S.; requiring the guardianship court to initiate proceedings for appointment of guardians for certain minors who are subject to chapter 39, F.S., proceedings if petitions are filed and if such minors have reached a specified age; providing that such minor has the same due process rights as certain adults; providing requirements for when an order of adjudication and letters of limited or plenary guardianship must be issued; providing that proceedings seeking appointment of a guardian advocate for certain minors be conducted separately from any other proceeding; providing an effective date.

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

Section 1. This act may be cited as "The Regis Little Act to Protect Children with Special Needs."

Section 2. Subsection (8) of section 39.6251, Florida Statutes, is amended to read:

39.6251 Continuing care for young adults.—

(8) During the time that a young adult is in care, the court shall maintain jurisdiction to ensure that the department and the lead agencies are providing services and coordinate with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan. The court shall review the status of the young adult at least every 6 months and hold a permanency review hearing at least annually. If the young adult is appointed a guardian under chapter 744 or a guardian advocate under s. 393.12, at the permanency review hearing the court shall review the necessity of continuing the guardianship and whether restoration of guardianship proceedings are needed when the young adult reaches 22 years of age. The court may appoint a guardian ad litem or continue the appointment of a guardian ad litem with the young adult's consent. The young adult or any other party to the dependency case may request an additional hearing or review.

Section 3. Paragraphs (b) and (c) of subsection (3) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, the department shall provide the court with an updated case plan that includes specific information related to the independent living skills that the child has acquired since the child's 13th birthday, or since the date the child came into foster care, whichever came later.

1. For any child that may meet the requirements for appointment of a guardian pursuant to chapter 744, or a guardian advocate pursuant to s. 393.12, the updated case plan must be developed in a face-to-face conference with the child, if appropriate; the child's attorney; any court-appointed guardian ad litem; the temporary custodian of the child; and the parent, if the parent's rights have not been terminated.

2. At the judicial review hearing, if the court determines pursuant to chapter 744 that there is a good faith basis to believe that the child qualifies for appointment of a guardian advocate, limited guardian, or plenary guardian for the child and that no less restrictive decisionmaking assistance will meet the child's needs:

a. The department shall complete a multidisciplinary report which must include, but is not limited to, a psychosocial evaluation and educational report if such a report has not been completed within the previous 2 years.

b. The department shall identify one or more individuals who are willing to serve as the guardian advocate pursuant to s. 393.12 or as the plenary or limited guardian pursuant to chapter 744. Any other interested parties or participants may make efforts to identify such a guardian advocate, limited guardian, or plenary guardian. The child's biological or adoptive family members, including the child's parents if the parents' rights have not been terminated, may not be considered for service as the plenary or limited guardian unless the court enters a written order finding that such an appointment is in the child's best interests.

c. Proceedings may be initiated within 180 days after the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744. The Legislature encourages the use of pro bono representation to initiate proceedings under this section.

3. In the event another interested party or participant initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under s. 393.12 or chapter 744 within 45 days after the first judicial review hearing after the child's 17th birthday.

4. Any proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744.

(c) If the court finds at the judicial review hearing that the department has not met its obligations to the child as stated in this part, in the written case plan, or in the provision of independent living services, the court may issue an order directing the department to show cause as to why it has not done so. If the department cannot justify its noncompliance, the court may give the department 30 days within which to comply. If the department fails to comply within 30 days, the court may hold the department in contempt.

Section 4. Paragraph (c) is added to subsection (2) of section 393.12, Florida Statutes, to read:

393.12 Capacity; appointment of guardian advocate.—

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(c) If a petition is filed pursuant to this section requesting appointment of a guardian advocate for a minor who is the subject of any proceeding under chapter 39, the court division with jurisdiction over guardianship matters has jurisdiction over the proceedings pursuant to this section when the minor reaches the age of 17 years and 6 months or anytime thereafter. The minor shall be provided all the due process rights conferred upon an alleged

developmentally disabled adult pursuant to this chapter. The order of appointment of a guardian advocate under this section shall issue upon the minor's 18th birthday or as soon thereafter as possible. Any proceeding pursuant to this paragraph shall be conducted separately from any other proceeding.

Section 5. Subsection (1) of section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.—

(1) The parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless the parents' parental rights have been terminated pursuant to chapter 39. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the court division with jurisdiction over guardianship matters finds that it is not in the child's best interests. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may 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 the court enters an order stating otherwise.

Section 6. Subsection (1) of section 744.3021, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

744.3021 Guardians of minors.—

(1) Except as provided in subsection (4), upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication pursuant to s. 744.331. A guardian appointed for a minor, whether of the person or property, has the authority of a plenary guardian.

(4) If a petition is filed pursuant to this section requesting appointment of a guardian for a minor who is the subject of any proceeding under chapter 39 and who is aged 17 years and 6 months or older, the court division with jurisdiction over guardianship matters has jurisdiction over the proceedings under s. 744.331. The alleged incapacitated minor under this subsection shall be provided all the due process rights conferred upon an alleged incapacitated adult pursuant to this chapter and applicable court rules. The order of adjudication under s. 744.331 and the letters of limited or plenary guardianship may issue upon the minor's 18th birthday or as soon thereafter

as possible. Any proceeding pursuant to this subsection shall be conducted separately from any other proceeding.

Section 7. This act shall take effect July 1, 2015.

Approved by the Governor June 10, 2015.

Filed in Office Secretary of State June 10, 2015.