

CHAPTER 2024-242

House Bill No. 73

An act relating to supported decisionmaking authority; amending s. 393.12, F.S.; requiring a circuit court to consider certain needs and abilities of a person with a developmental disability when determining whether to appoint a guardian advocate; providing requirements for a petition to appoint a guardian advocate for a person with a developmental disability and for a court order if the court finds that such person requires such appointment; amending s. 709.2201, F.S.; authorizing an agent acting for a principal to grant a supported decisionmaking agreement; creating s. 709.2209, F.S.; defining the term “supported decisionmaking agreement”; prohibiting such agreement from acting as a durable power of attorney; authorizing specified authority to a supported decisionmaking agreement; providing that certain communications shall be recognized as a communication of the principal under certain circumstances; amending s. 744.3201, F.S.; requiring a petition to determine incapacity of a person to include specified information relating to the alleged incapacitated person’s use of assistance; amending s. 744.331, F.S.; providing requirements for an examining committee member when determining the alleged incapacitated person’s ability to exercise his or her rights; amending s. 744.464, F.S.; authorizing a suggestion of capacity to include certain capabilities of the ward; amending s. 1003.5716, F.S.; revising the requirements for a specified process relating to individual education plans for certain students to include supported decisionmaking agreements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2), paragraph (a) of subsection (3), and subsection (8) of section 393.12, Florida Statutes, are amended to read:

393.12 Capacity; appointment of guardian advocate.—

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(a) A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities, if the person lacks the decisionmaking ability to do some, but not all, of the decisionmaking tasks necessary to care for his or her person or property or if the person has voluntarily petitioned for the appointment of a guardian advocate. In determining whether to appoint a guardian advocate, the court shall consider the person’s unique needs and abilities, including, but not limited to, the person’s ability to independently exercise his or her rights with appropriate assistance, and may only delegate decisionmaking tasks that the person lacks the decisionmaking ability to exercise. Except as

otherwise specified, the proceeding shall be governed by the Florida Rules of Probate Procedure.

(3) PETITION.—

(a) A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified and must:

1. State the name, age, and present address of the petitioner and his or her relationship to the person with a developmental disability;

2. State the name, age, county of residence, and present address of the person with a developmental disability;

3. Allege that the petitioner believes that the person needs a guardian advocate and specify the factual information on which such belief is based;

4. Specify the exact areas in which the person lacks the decisionmaking ability to make informed decisions about his or her care and treatment services or to meet the essential requirements for his or her physical health or safety;

5. Specify the legal disabilities to which the person is subject; ~~and~~

6. Identify any other type of guardian advocacy or alternatives to guardian advocacy that the person has designated, is in currently, or has been in previously and the reasons why alternatives to guardian advocacy are insufficient to meet the needs of the person;

7. State whether the person uses assistance to exercise his or her rights, including, but not limited to, supported decisionmaking, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights; and

~~8.6.~~ State the name of the proposed guardian advocate, the relationship of that person to the person with a developmental disability; the relationship that the proposed guardian advocate had or has with a provider of health care services, residential services, or other services to the person with a developmental disability; and the reason why this person should be appointed. The petition must also state if a willing and qualified guardian advocate cannot be located.

(8) COURT ORDER.—If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the court shall enter a written order appointing the guardian advocate and containing the findings of facts and conclusions of law on which the court made its decision, including:

(a) The nature and scope of the person's lack of decisionmaking ability;

(b) The exact areas in which the individual lacks decisionmaking ability to make informed decisions about care and treatment services or to meet the essential requirements for his or her physical health and safety;

(c) The specific legal disabilities to which the person with a developmental disability is subject;

(d) The identity of existing alternatives and a finding as to the validity or sufficiency of such alternative to alleviate the need for the appointment of a guardian advocate;

~~(e)~~(d) The name of the person selected as guardian advocate and the reasons for the court’s selection; and

~~(f)~~(e) The powers, duties, and responsibilities of the guardian advocate, including bonding of the guardian advocate, as provided in s. 744.351.

Section 2. Paragraph (d) is added to subsection (2) of section 709.2201, Florida Statutes, to read:

709.2201 Authority of agent.—

(2) As a confirmation of the law in effect in this state when this part became effective, such authorization may include, without limitation, authority to:

(d) If such authority is specifically limited, grant a supported decision-making agreement as defined in s. 709.2209(1).

Section 3. Section 709.2209, Florida Statutes, is created to read:

709.2209 Supported decisionmaking agreements.—

(1) For purposes of this section, “supported decisionmaking agreement” means an agreement in which the power of attorney grants an agent the authority to receive information and to communicate on behalf of the principal without granting the agent the authority to bind or act on behalf of the principal on any subject matter.

(2) A supported decisionmaking agreement is not a durable power of attorney under s. 709.2104. Any language of durability in a supported decisionmaking agreement is of no effect.

(3) A supported decisionmaking agreement may only include the authority to:

(a) Obtain information on behalf of the principal, including, but not limited to, protected health information under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended; educational records under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g; or information protected under 42 U.S.C. s. 290dd-2 or 42 C.F.R. part 2.

(b) Assist the principal in communicating with third parties, including conveying the principal's communications, decisions, and directions to third parties on behalf of the principal.

(4) A communication made by the principal with the assistance of or through an agent under a supported decisionmaking agreement that is within the authority granted to the agent may be recognized for as a communication of the principal.

Section 4. Subsection (2) of section 744.3201, Florida Statutes, is amended to read:

744.3201 Petition to determine incapacity.—

(2) The petition must be verified and must:

(a) State the name, age, and present address of the petitioner and his or her relationship to the alleged incapacitated person;

(b) State the name, age, county of residence, and present address of the alleged incapacitated person;

(c) Specify the primary language spoken by the alleged incapacitated person, if known;

(d) State whether the alleged incapacitated person uses assistance to exercise his or her rights, including, but not limited to, supported decisionmaking, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights;

~~(e)~~(d) Allege that the petitioner believes the alleged incapacitated person to be incapacitated and specify the factual information on which such belief is based and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observations;

~~(f)~~(e) State the name and address of the alleged incapacitated person's attending or family physician, if known;

(g)(f) State which rights enumerated in s. 744.3215 the alleged incapacitated person is incapable of exercising, to the best of petitioner's knowledge. If the petitioner has insufficient experience to make such judgments, the petition must so state; and

(h)(g) State the names, relationships, and addresses of the next of kin of the alleged incapacitated person, so far as are known, specifying the dates of birth of any who are minors.

Section 5. Paragraph (e) of subsection (3) of section 744.331, Florida Statutes, is amended 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. An examining committee member may allow a person to assist in communicating with the alleged incapacitated person when requested by the court-appointed counsel for the alleged incapacitated person and shall identify the person who provided assistance and describe the nature and method of assistance provided in his or her report. 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 within 15 days after appointment.

Section 6. Paragraph (a) of subsection (2) of section 744.464, Florida Statutes, is amended to read:

744.464 Restoration to capacity.—

(2) SUGGESTION OF CAPACITY.—

(a) Any interested person, including the ward, may file a suggestion of capacity. The suggestion of capacity must state that the ward is currently capable of exercising some or all of the rights which were removed, including the capability to independently exercise his or her rights with appropriate assistance.

Section 7. Paragraph (d) of subsection (1) of section 1003.5716, Florida Statutes, is amended to read:

1003.5716 Transition to postsecondary education and career opportunities.—All students with disabilities who are 3 years of age to 21 years of age have the right to a free, appropriate public education. As used in this section, the term "IEP" means individual education plan.

(1) To ensure quality planning for a successful transition of a student with a disability to postsecondary education and career opportunities, during the student's seventh grade year or when the student attains the age of 12, whichever occurs first, an IEP team shall begin the process of, and develop an IEP for, identifying the need for transition services before the student with a disability enters high school or attains the age of 14 years, whichever occurs first, in order for his or her postsecondary goals and career goals to be identified. The plan must be operational and in place to begin implementation on the first day of the student's first year in high school. This process must include, but is not limited to:

(d) At least 1 year before the student reaches the age of majority, provision of information and instruction to the student and his or her parent

on self-determination and the legal rights and responsibilities regarding the educational decisions that transfer to the student upon attaining the age of 18. The information must include the ways in which the student may provide informed consent to allow his or her parent to continue to participate in educational decisions, including:

1. Informed consent to grant permission to access confidential records protected under the Family Educational Rights and Privacy Act (FERPA) as provided in s. 1002.22.
2. Powers of attorney as provided in chapter 709.
3. Guardian advocacy as provided in s. 393.12.
4. Guardianship as provided in chapter 744.
5. Supported decisionmaking agreements as provided in s. 709.2209.

The State Board of Education shall adopt rules to administer this paragraph.

Section 8. This act shall take effect July 1, 2024.

Approved by the Governor June 14, 2024.

Filed in Office Secretary of State June 14, 2024.