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CS/HB 399

2017 Legislature

1
2 An act relating to guardianship; amending s. 744.331,
3 F.S.; requiring each examining committee member in a
4 proceeding to determine incapacity to file his or her
5 report with the clerk of the court within a specified
6 timeframe after appointment; requiring the clerk of
7 the court to serve each report on specified persons
8 within a specified timeframe; requiring the clerk of
9 the court to file a certificate of service of each
10 report in the incapacity proceeding; revising the
11 timeframe before the hearing on the petition within
12 which specified parties must be served with all
13 reports; authorizing parties to agree to waive the
14 timeframe; authorizing the petitioner and the alleged
15 incapacitated person to move for a continuance if
16 service is not timely effectuated and to object to the
17 introduction of all or any part of a report by filing
18 and serving a written objection to admissibility on
19 the other party within a specified timeframe;
20 specifying that the admissibility of the report is
21 governed by the rules of evidence; requiring that the
22 adjudicatory hearing be conducted within a specified
23 timeframe after the filing of the last filed report;
24 amending s. 744.367, F.S.; increasing the time that a
25 guardian has to file a required annual guardianship

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26 | plan with the court if the court does not require
27 | filing on a calendar year basis; changing the time
28 | that a guardian has to file a required annual
29 | guardianship plan with the court if the court requires
30 | calendar-year filing; amending s. 744.3725, F.S.;
31 | eliminating the requirement that a court must first
32 | find that a ward's spouse has consented to dissolution
33 | of marriage before the court may authorize a guardian
34 | to exercise specified rights; amending s. 744.441,
35 | F.S.; removing the cap on funeral expenses that may be
36 | paid from a ward's estate; reenacting s. 744.3215(4),
37 | F.S., relating to the rights of persons determined
38 | incapacitated, to incorporate the amendment made to s.
39 | 744.3725, F.S., in a reference thereto; providing an
40 | effective date.

41 |
42 | Be It Enacted by the Legislature of the State of Florida:

43 |
44 | Section 1. Paragraphs (e) and (h) of subsection (3) and
45 | paragraph (a) of subsection (5) of section 744.331, Florida
46 | Statutes, are amended, and paragraph (i) is added to subsection
47 | (3) of that section, to read:

48 | 744.331 Procedures to determine incapacity.—

49 | (3) EXAMINING COMMITTEE.—

50 | (e) Each member of the examining committee shall examine

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51 | the person. Each examining committee member must determine the
52 | alleged incapacitated person's ability to exercise those rights
53 | specified in s. 744.3215. In addition to the examination, each
54 | examining committee member must have access to, and may
55 | consider, previous examinations of the person, including, but
56 | not limited to, habilitation plans, school records, and
57 | psychological and psychosocial reports voluntarily offered for
58 | use by the alleged incapacitated person. Each member of the
59 | examining committee must file his or her report with the clerk
60 | of the court ~~submit a report~~ within 15 days after appointment.

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

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76 ~~on the attorney for the alleged incapacitated person within 3~~
 77 ~~days after the report is filed and at least 5 days before the~~
 78 ~~hearing on the petition.~~

79 (i) The petitioner and the alleged incapacitated person
 80 may object to the introduction into evidence of all or any
 81 portion of the examining committee members' reports by filing
 82 and serving a written objection on the other party no later than
 83 5 days before the adjudicatory hearing. The objection must state
 84 the basis upon which the challenge to admissibility is made. If
 85 an objection is timely filed and served, the court shall apply
 86 the rules of evidence in determining the reports' admissibility.
 87 For good cause shown, the court may extend the time to file and
 88 serve the written objection.

89 (5) ADJUDICATORY HEARING.—

90 (a) Upon appointment of the examining committee, the court
 91 shall set the date upon which the petition will be heard. The
 92 ~~date for the~~ adjudicatory hearing must be conducted at least 10
 93 days, which time period may be waived, but no more than 30 days,
 94 after the filing of the last filed report of the examining
 95 committee members ~~set no more than 14 days after the filing of~~
 96 ~~the reports of the examining committee members,~~ unless good
 97 cause is shown. The adjudicatory hearing must be conducted at
 98 the time and place specified in the notice of hearing and in a
 99 manner consistent with due process.

100 Section 2. Subsection (1) of section 744.367, Florida

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101 Statutes, is amended to read:

102 744.367 Duty to file annual guardianship report.—

103 (1) Unless the court requires filing on a calendar-year
 104 basis, each guardian of the person shall file with the court an
 105 annual guardianship plan within 90 days after ~~at least 60 days,~~
 106 ~~but no more than 90 days,~~ before the last day of the anniversary
 107 month that the letters of guardianship were signed, and the plan
 108 must cover the coming fiscal year, ending on the last day in
 109 such anniversary month. If the court requires calendar-year
 110 filing, the guardianship plan ~~for the forthcoming calendar year~~
 111 must be filed on or before April 1 of each year. The latest
 112 annual guardianship plan approved by the court will remain in
 113 effect until the court approves a subsequent plan after
 114 ~~September 1 but no later than December 1 of the current year.~~

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

117 744.3725 Procedure for extraordinary authority.—Before the
 118 court may grant authority to a guardian to exercise any of the
 119 rights specified in s. 744.3215(4), the court must:

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

125 (2) Receive as evidence independent medical,

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126 | psychological, and social evaluations with respect to the
 127 | incapacitated person by competent professionals or appoint its
 128 | own experts to assist in the evaluations;

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

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

138 | (5) Be persuaded by clear and convincing evidence that the
 139 | authority being requested is in the best interests of the
 140 | incapacitated person. ~~;~~ and

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

143 |
 144 | The provisions of this section and s. 744.3215(4) are procedural
 145 | and do not establish any new or independent right to or
 146 | authority over the termination of parental rights, dissolution
 147 | of marriage, sterilization, abortion, or the termination of life
 148 | support systems.

149 | Section 4. Subsection (16) of section 744.441, Florida
 150 | Statutes, is amended to read:

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151 744.441 Powers of guardian upon court approval.—After
 152 obtaining approval of the court pursuant to a petition for
 153 authorization to act, a plenary guardian of the property, or a
 154 limited guardian of the property within the powers granted by
 155 the order appointing the guardian or an approved annual or
 156 amended guardianship report, may:

157 (16) Pay reasonable funeral, interment, and grave marker
 158 expenses for the ward from the ward's estate, ~~up to a maximum of~~
 159 ~~\$6,000.~~

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

164 744.3215 Rights of persons determined incapacitated.—

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

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

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

175 1. It is of direct benefit to, and is intended to preserve

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176 | the life of or prevent serious impairment to the mental or
177 | physical health of the ward; or

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

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

182 | (d) Consent on behalf of the ward to termination of the
183 | ward's parental rights.

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

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