

744.1012 Legislative intent.—The Legislature finds that:

- (1) Adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary.
- (2) It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs and that alternatives to guardianship and less restrictive means of assistance, including, but not limited to, guardian advocates, be explored before a plenary guardian is appointed.
- (3) By recognizing that every individual has unique needs and differing abilities, it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. This act shall be liberally construed to accomplish this purpose.
- (4) Private guardianship may be inadequate when there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian.
- (5) Through the establishment of the Office of Public and Professional Guardians, the Legislature intends to permit the establishment of offices of public guardians for the purpose of providing guardianship services for incapacitated persons when no private guardian is available.
- (6) A public guardian will be provided only to those persons whose needs cannot be met through less restrictive means of intervention. A public guardian may also serve in the capacity of a limited guardian or guardian advocate under s. [393.12](#) when the public guardian is the guardian of last resort as described in subsection (4).

744.102 Definitions.—As used in this chapter, the term:

- (12) “Incapacitated person” means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.
- (a) To “manage property” means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.
- (b) To “meet essential requirements for health or safety” means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.
- (21) “Totally incapacitated” means incapable of exercising any of the rights enumerated in s. [744.3215](#)(2) and (3).

744.3031 Emergency temporary guardianship.—

- (1) A court, prior to appointment of a guardian but after a petition for determination of incapacity has been filed pursuant to this chapter, may appoint an emergency temporary guardian for the person or property, or both, of an alleged incapacitated person. The court must specifically find that there appears to be imminent danger that the physical or mental

health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The subject of the proceeding or any adult interested in the welfare of that person may apply to the court in which the proceeding is pending for the emergency appointment of a temporary guardian. The powers and duties of the emergency temporary guardian must be specifically enumerated by court order. The court shall appoint counsel to represent the alleged incapacitated person during any such summary proceedings, and such appointed counsel may request that the proceeding be recorded and transcribed.

(3) The court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed at the time of entry of an order determining incapacity.

(4) The authority of an emergency temporary guardian expires 90 days after the date of appointment or when a guardian is appointed, whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional 90 days upon a showing that the emergency conditions still exist.

(5) The court may issue an injunction, restraining order, or other appropriate writ to protect the physical or mental health or safety of the person who is the ward of the emergency temporary guardianship.

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. 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](#).

744.312 Considerations in appointment of guardian.—

(1) 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.

(2) If a guardian cannot be appointed under subsection (1), the court may appoint any person who is fit and proper and qualified to act as guardian, whether related to the ward or not. 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.
- (e) Inquire into and consider potential disqualifications under s. [744.309](#) and potential conflicts of interest under s. [744.446](#).
- (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.

744.3201 Petition to determine incapacity.—

- (1) A petition to determine incapacity of a person may be executed by an adult person.
- (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) 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;
 - (e) State the name and address of the alleged incapacitated person's attending or family physician, if known;
 - (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
 - (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.
- (3) A copy of any petition for appointment of guardian or emergency temporary guardian, if applicable, shall be filed with the petition to determine incapacity.

744.3215 Rights of persons determined incapacitated.—

- (1) A person who has been determined to be incapacitated retains the right:
 - (a) To have an annual review of the guardianship report and plan.
 - (b) To have continuing review of the need for restriction of his or her rights.

- (c) To be restored to capacity at the earliest possible time.
- (d) To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.
- (e) To have a qualified guardian.
- (f) To remain as independent as possible, including having his or her preference as to place and standard of living honored, either as he or she expressed or demonstrated his or her preference prior to the determination of his or her incapacity or as he or she currently expresses his or her preference, insofar as such request is reasonable.
- (g) To be properly educated.
- (h) To receive prudent financial management for his or her property and to be informed how his or her property is being managed, if he or she has lost the right to manage property.
- (i) To receive services and rehabilitation necessary to maximize the quality of life.
- (j) To be free from discrimination because of his or her incapacity.
- (k) To have access to the courts.
- (l) To counsel.
- (m) To receive visitors and communicate with others.
- (n) To notice of all proceedings related to determination of capacity and guardianship, unless the court finds the incapacitated person lacks the ability to comprehend the notice.
- (o) To privacy.
- (2) Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:
 - (a) To marry. If the right to enter into a contract has been removed, the right to marry is subject to court approval.
 - (b) To vote.
 - (c) To personally apply for government benefits.
 - (d) To have a driver license.
 - (e) To travel.
 - (f) To seek or retain employment.
- (3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:
 - (a) To contract.
 - (b) To sue and defend lawsuits.
 - (c) To apply for government benefits.
 - (d) To manage property or to make any gift or disposition of property.
 - (e) To determine his or her residence.
 - (f) To consent to medical and mental health treatment.
 - (g) To make decisions about his or her social environment or other social aspects of his or her life.
- (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.

744.331 Procedures to determine incapacity.—

(3) EXAMINING COMMITTEE.—

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, a gerontologist, a psychiatrist, a physician, an advanced practice registered nurse, a registered nurse, a licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or any other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician.

Members of the examining committee may not be related to or associated with one another, with the petitioner, with counsel for the petitioner or the proposed guardian, or with the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The clerk of the court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.

(b) A person who has been appointed to serve as a member of an examining committee to examine an alleged incapacitated person may not thereafter be appointed as a guardian for the person who was the subject of the examination.

(c) Each person appointed to an examining committee must file an affidavit with the court stating that he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare a list of persons qualified to be members of an examining committee.

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the Office of Public and Professional Guardians, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate and Trust Law sections of The Florida Bar; and the Florida State Guardianship Association. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

(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 within 15 days after appointment.

(f) The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by each examining committee member as part of his or her written report. The comprehensive examination report should be an essential

element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;
2. A mental health examination; and
3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(g) Each committee member's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.
3. The results of the comprehensive examination and the committee member's assessment of information provided by the attending or family physician, if any.
4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.
5. The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.
6. The signature of the committee member and the date and time the member conducted his or her examination.

(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.

(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.

(4) **DISMISSAL OF PETITION.**—If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.

(5) **ADJUDICATORY HEARING.**—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. 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, 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.

(b) The alleged incapacitated person must be present at the adjudicatory hearing, unless waived by the alleged incapacitated person or the person's attorney or unless good cause can be shown for her or his absence. Determination of good cause rests in the sound discretion of the court.

(c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.

(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 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.

(7) FEES.—

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall

enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the payments.

(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 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.

744.341 Voluntary guardianship.—

(1) Without adjudication of incapacity, the court shall appoint a guardian of the property of a resident or nonresident person who, though mentally competent, is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment. The petition shall be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority. Notice of hearing on any petition for appointment and for authority to act shall be given to the petitioner and to any person to whom the petitioner requests that notice be given. Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.

(2) If requested in the petition for appointment of a guardian brought under this section, the court may direct the guardian to take possession of less than all of the ward's property and of the rents, income, issues, and profits from it. In such case, the court shall specify in its order the property to be included in the guardianship estate, and the duties and responsibilities of the guardian appointed under this section will extend only to such property.

(3) Unless the voluntary guardianship is limited pursuant to subsection (2), any guardian appointed under this section has the same duties and responsibilities as are provided by law for plenary guardians of the property, generally.

(4) A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward not more than 90 days before the annual report is filed with the court. The certificate must certify that the ward is competent to understand the nature of the guardianship and of the ward's authority to delegate powers to the voluntary guardian.

(5) A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated. A copy of the notice must be served on all interested persons.

744.464 Restoration to capacity.—

(1) VENUE.—A suggestion of capacity must be filed with the court in which the guardianship is pending.

(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.

(b) Upon the filing of the suggestion of capacity, the court shall immediately appoint a physician to examine the ward. The physician must examine the ward and file his or her report with the court within 20 days after the appointment.

(c) The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, and any other interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.

(d) Any objections to the suggestion of capacity must be filed within 20 days after service of the notice.

(e) If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.

(f) Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward's attorney, the guardian, the ward's next of kin, and any other interested persons as directed by the court.

(3) ORDER OF RESTORATION.—

(a) If no objections are filed, and the court is satisfied that 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.

(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.

(c) If only some rights are restored to the ward, the order must state which rights are restored, and the guardian shall prepare a new guardianship report which addresses only the remaining rights retained by the guardian. The guardian must file a copy of the new report with the court within 60 days after the entry of the order.

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