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**Investigation of Payments  
Made to Professional  
Guardian—Rebecca Fierle  
by AdventHealth**

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**Phil Diamond, CPA  
County Comptroller  
Orange County, Florida**

[www.occompt.com](http://www.occompt.com)



# County Audit Division

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## Orange County Comptroller's Office

### Mission

The mission of the Orange County Comptroller's Office is to serve the citizens of Orange County and our customers by providing responsive, ethical, effective, and efficient protection and management of public funds, assets, and documents, as specified in the Florida Constitution and Florida Statutes.

### Vision

The vision of the Orange County Comptroller's Office is to be recognized as a highly competent, cohesive team leading the quest for continuing excellence in the effective safeguarding and ethical management of public funds, assets, and documents.



**OFFICE OF THE COMPTROLLER**

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COUNTY  
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September 10, 2019

TO: Wynter A. Solomon-Cuthbert, Court Monitor, Ninth Judicial  
Circuit Court of Florida

FROM: Phil Diamond, CPA, Orange County Comptroller *PAD*

SUBJECT: Investigation of Payments Made to Professional Guardian—Rebecca  
Fierle by AdventHealth

**Background**

On July 8, 2019, we submitted an investigative report to the Court Monitor. The subject of that report was Rebecca Fierle—a professional guardian assigned to almost 100 Orange County guardianship cases at that time. In addition to other potential violations of Florida Guardianship law, the report indicated that Ms. Fierle may have received payments from AdventHealth—which she had not reported to the Court.

At a hearing on July 11, 2019, AdventHealth’s representative advised the Court that it had paid Ms. Fierle for services related to guardianship cases. The Court advised the representative and other parties at the hearing that it would be improper for Ms. Fierle to receive payments for providing services as a guardian without reporting those payments to the Court. At the hearing, the Court ordered that Ms. Fierle be removed as guardian in all Orange County guardianship cases<sup>1</sup>.

In order to quantify the unreported amounts that Ms. Fierle received, the Court issued an Order to Produce to AdventHealth. The Order required “all contracts and documents including, but not limited to Medicaid case management services, guardianship

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<sup>1</sup> Ms. Fierle voluntarily resigned from all of the cases

services, case management services, permanent patient services and all other services rendered, the names of individuals to whom services were provided and payments (types of payment) made to Rebecca Fierle” and a number of other companies affiliated with Ms. Fierle, including Geriatric Management, Inc. and Geriatric Management, LLC<sup>2</sup>.

In response to the Order, AdventHealth provided 6,936<sup>3</sup> invoices. Based on the number of documents provided and the issues we previously reported, the Court Monitor requested our assistance reviewing the invoices to determine the amounts received by Ms. Fierle from AdventHealth for guardianship cases that she failed to report to the Court.

### **Analysis of Invoices**

From the 6,936 invoices and other documents provided by AdventHealth, we determined that Rebecca Fierle, through her companies (Ms. Fierle), submitted charges of at least \$3,956,325 to AdventHealth for payments between January 2009 and June 2019.



Charges totaled  
approximately  
**\$4 Million**

Each invoice was submitted by either Geriatric Management, Inc. or Geriatric Management, LLC and included the name of the patient being served and the guardianship case number assigned by the Court, if applicable.

The total amount of payments reported by AdventHealth since 2014<sup>4</sup> was \$3,706,609. The chart on the following page shows the total amount of billings by year:

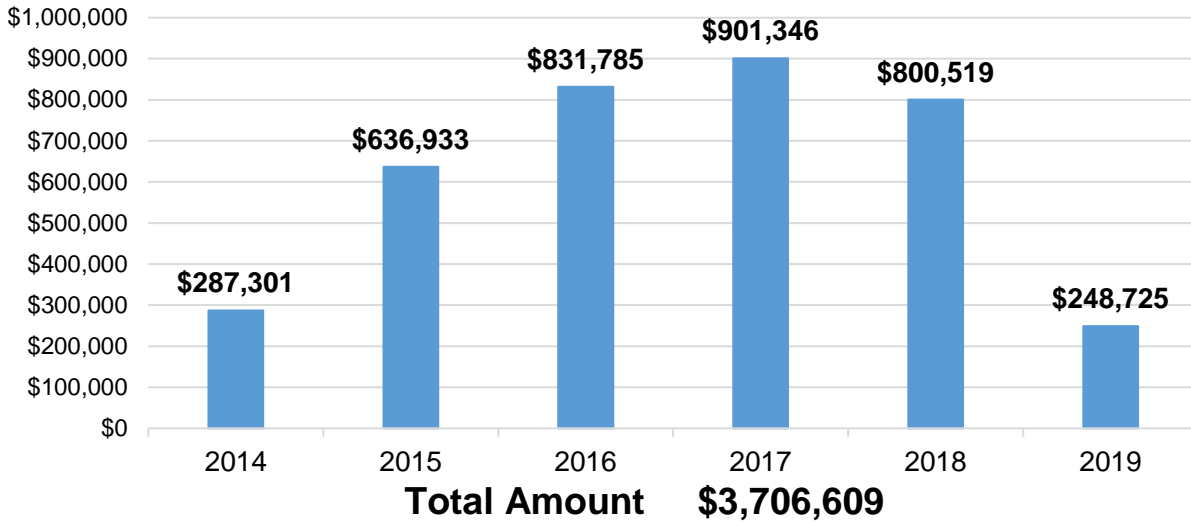
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<sup>2</sup> Florida Department of State records list Rebecca Fierle as the registered agent and manager of Geriatric Management, LLC. Geriatric Management, Inc. was administratively dissolved on September 26, 2014.

<sup>3</sup> Although 7,163 physical invoices were provided, 227 appeared to be duplicates and were only listed on the payment file once. Twenty of the duplicate invoices were paid twice as noted in Section 4, Duplicate Payments by AdventHealth for Identical Services.

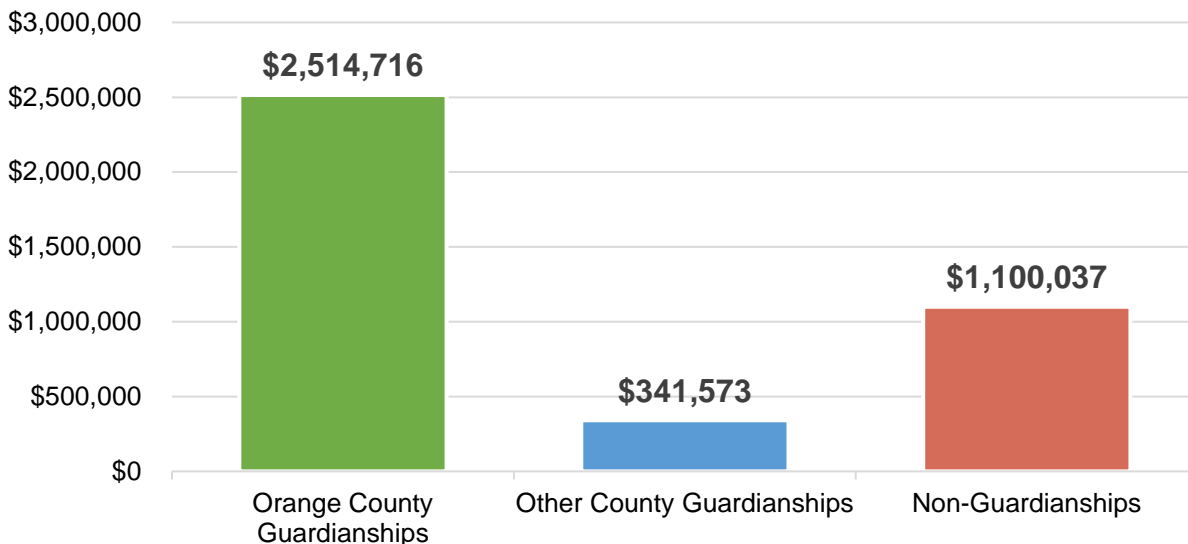
<sup>4</sup> The number of pre-January 2014 invoices was significantly lower and payment data was not provided to confirm these amounts.

### Total Invoices Submitted to AdventHealth

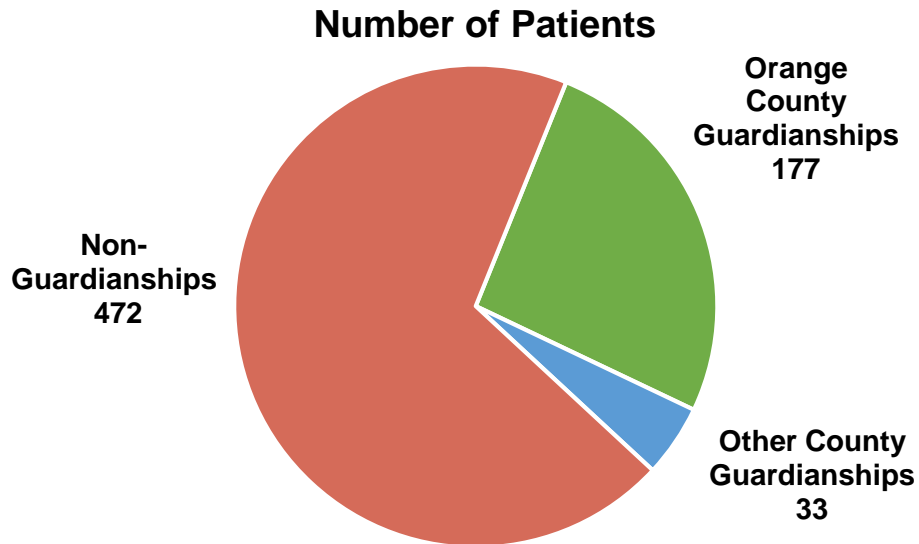


After analyzing the invoices, we determined payments were made on behalf of 682 patients. Patient names and case numbers, included on the invoices, were compared to Court records to determine whether the corresponding payments were related to an Orange County guardianship case, a guardianship case in another Florida county, or involved a patient who was never the subject of a guardianship case. We also identified some Orange County guardianship cases that were assigned to another guardian but AdventHealth was making payments to Ms. Fierle.

### Invoices Submitted by Type



As the chart shows, only 210 of the 682 patients were ever under the protection of a Court supervised guardianship case.



### **Limitations on our Conclusions**

After the Court issued a second Order to Produce for the documents that were not originally provided, AdventHealth provided a payment file to the Court on August 30, 2019. We compared the payment file with the invoices previously provided and identified the following potential issues:

- We identified 539 physical invoices totaling \$307,382 that appeared to have been paid. However, they were not included on the payment file.
- The payment file listed 900 invoices totaling \$502,112 that were not provided to the Court.
- The amount on the physical invoice did not always match the payment file amount.

## **Issues Related to Orange County Guardianship Cases**

### **1. Amounts Received for Guardian Fees Not Reported to the Court**

We analyzed each invoice to identify patients related to Orange County guardianship cases. We identified invoices related to 177 different Orange County guardianship cases. In addition, 33 patients were wards in guardianship cases in other Florida counties including Brevard, Lake, Osceola, Pinellas, and Seminole<sup>5</sup>.

The payments related to the 177 Orange County cases totaled \$2,514,716<sup>6</sup>. None of these amounts were reported to the Court as required by Florida law.

An additional \$341,573 was paid to Ms. Fierle related to other Florida guardianship cases. In summary, the total amount paid to Ms. Fierle from AdventHealth related to Florida guardianship cases was slightly less than \$3 million dollars.

**51** Cases where guardian received more than \$20,000

After analyzing the amounts received by ward, we identified 51 cases where Ms. Fierle was paid more than \$20,000. The amounts received per ward are included in Appendix B.

When guardian fees are submitted to the Court for approval, the Court should consider the nine criteria of F.S. 744.108, including, but not limited to, the fee customarily charged in the locality for similar services. The Court has determined that the maximum amount that will be paid for Orange County guardian fees is currently \$65/hour. The invoices indicated that AdventHealth is currently paying \$130/hour. Therefore, in bypassing the court approval process, Ms. Fierle's fees were not consistent with the fees determined to be reasonable by the Court.

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<sup>5</sup> We did not have access to Court records in the other Florida counties and were unable to determine whether these amounts were reported to the applicable Courts.

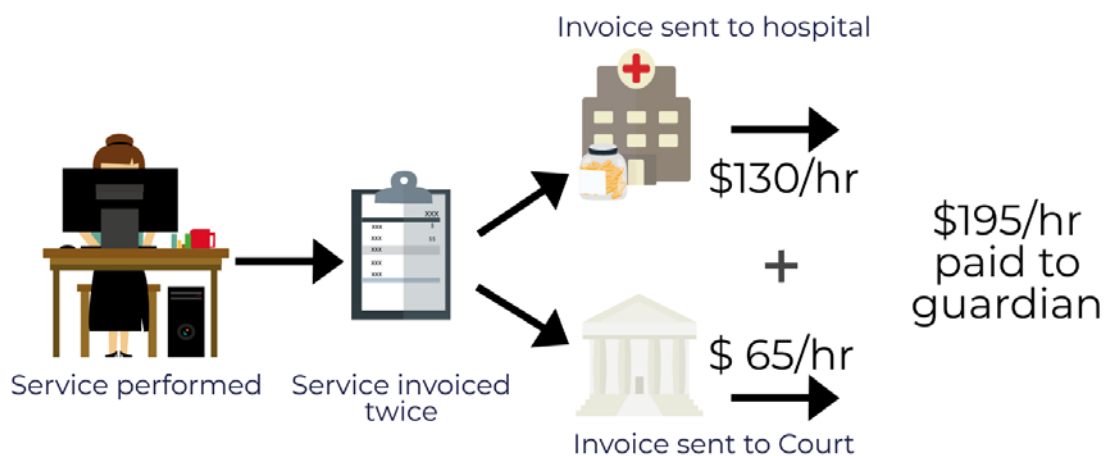
<sup>6</sup> Submitted on 4,040 separate invoices.

Additionally, by receiving unreported fees from AdventHealth, she appeared to maintain business relationships with the wards that weren't disclosed—let alone approved—by the Court. F.S. 744.446 prohibits guardians from having business relationships or personally profiting from business relationships with a ward without Court approval or proper disclosure.

Any violation of F.S. 744.446 could subject the guardian to removal and imposition of personal liability. As noted previously, Ms. Fierle's authority as a guardian in Orange County ended on July 11, 2019.

## 2. Guardian Fees Were Paid by Both AdventHealth and the Wards

We compared a limited number of invoices that Ms. Fierle submitted to AdventHealth with the accountings and fee petitions Ms. Fierle submitted to the Court. We identified several instances where identical fee requests were submitted to both AdventHealth and the Court.



For example, Ms. Fierle submitted an invoice to AdventHealth for guardian fees for May 2016 services totaling \$2,222.64. The description and charge for each item on the AdventHealth invoice were identical to those items on an invoice later submitted to the Court—except for the hourly rate. AdventHealth was billed \$120/hour and the same services were also approved for payment by the Court from the ward's assets at \$64/hour<sup>7</sup> for a total of \$1,192.24.

<sup>7</sup> \$64/hour was the rate approved by the Court at the time



**Duplicate Billing—AdventHealth and Ward’s Guardianship Billed for Identical Services**

**AdventHealth Invoice**

Geriatric Management, LLC  
 P.O. Box 568625  
 Orlando, FL 32856

*Rebecca 510745  
 PA# 3136846*

**INVOICE**  
 2016053138093

Date: June 1, 2016

To: ATTN: Sophia Rainford  
 FLORIDA HOSPITAL SYSTEM  
 701 E. Altamonte Drive, Ste 2000  
 Altamonte Springs FL 32701  
 email: sophia.rainford@fhosp.org

Invoice for Service Provided  
 05/01/2016 - 05/31/2016

Provided To: [REDACTED]  
 Billing Reference: 85094715  
 Current Charges: \$2,222.64

Case number: [REDACTED]

Date	Description	Quantity	Rate	Total
05/02/2016	Telephone calls to/from daughter and hospice inpatient unit	0.50	120.000	\$60.00
05/02/2016	Comm with daughter re her parents, F/U with additional info and email CM	0.40	120.000	\$48.00
05/02/2016	EM atty regarding initial plan.	0.10	120.000	\$12.00
05/02/2016	emailed S+S to f/u on amended doc for wife's preneed, p/c from Osceola Memory gardens, received contract, emailed S+S to start petition for Mr. [REDACTED] p/c from [REDACTED], emailed LY and RF	0.30	120.000	\$36.00
05/02/2016	P/c from SNF / Vitas - gather info - email sent	0.10	120.000	\$12.00
05/02/2016	visit client in IPU, email, phone call,	1.00	120.000	\$120.00
05/02/2016	f/u call to daughter	0.60	120.000	\$72.00
05/03/2016	p/c from [REDACTED] emailed LY	0.10	120.000	\$12.00
05/03/2016	pc; comm to ly	0.10	120.000	\$12.00
05/03/2016	p/c to OHR, req face sheet, sent req to update funeral home on face sheet at facility	0.10	120.000	\$12.00
05/03/2016	P/c to SNF -online w/MCR - f/u doc - review info - prepare doc - update log	0.30	120.000	\$36.00
05/03/2016	call to daughter, email, update Vitas IPU	1.00	120.000	\$120.00
05/04/2016	f/u snf, snf search, fax, call to daughter, f/u IPU	1.50	120.000	\$180.00
05/05/2016	research information/gather information	0.30	120.000	\$36.00
05/05/2016	Call from attorney's office regarding TPP, reviewed and explained the situation	0.30	120.000	\$36.00
05/05/2016	Comm w/bank	0.10	120.000	\$12.00
05/05/2016	snf search, phone calls, fax, email	1.00	120.000	\$120.00
05/06/2016	Comm re amount due, confirm payment, draft check	0.20	120.000	\$24.00
05/06/2016	updated address in EMS, 2 p/c's from Sunbelt, faxed LOG, emailed DD	0.10	120.000	\$12.00
05/06/2016	Scan/email Fairwinds letter	0.10	120.000	\$12.00
05/06/2016	f/u call, email, text, snf placement, calls to daughter	1.50	120.000	\$180.00
05/09/2016	Fwd msg to CM	0.10	120.000	\$12.00
05/09/2016	p/c from [REDACTED] emailed MK	0.10	120.000	\$12.00
05/09/2016	email	0.10	120.000	\$12.00
05/09/2016	Visits to ward at SNF, spoke to sw, chart review completed	1.00	120.000	\$120.00

AdventHealth hourly rate - \$120/hour

**Court Approved Invoice Paid by Guardianship**

Geriatric Management, LLC  
 P.O. Box 568625  
 Orlando, FL 32856

**INVOICE**  
 2016073138093

Date: August 1, 2016

To: Self Pay

Invoice for Service Provided  
 05/01/2016 - 07/31/2016

Provided To: [REDACTED]  
 Current Charges: \$1,964.74

Case number: [REDACTED]

Date	Description	Quantity	Rate	Total
05/02/2016	Telephone calls to/from daughter and hospice inpatient unit	0.50	64.000	\$32.00
05/02/2016	Comm with daughter re her parents, F/U with additional info and email CM	0.40	64.000	\$25.60
05/02/2016	EM atty regarding initial plan.	0.10	64.000	\$6.40
05/02/2016	emailed S+S to f/u on amended doc for wife's preneed, p/c from Osceola Memory gardens, received contract, emailed S+S to start petition for Mr. [REDACTED] p/c from [REDACTED], emailed LY and RF	0.30	64.000	\$19.20
05/02/2016	P/c from SNF / Vitas - gather info - email sent	0.10	64.000	\$6.40
05/02/2016	visit client in IPU, email, phone call,	1.00	64.000	\$64.00
05/02/2016	f/u call to daughter	0.60	64.000	\$38.40
05/03/2016	p/c from [REDACTED] emailed LY	0.10	64.000	\$6.40
05/03/2016	pc; comm to ly	0.10	64.000	\$6.40
05/03/2016	p/c to OHR, req face sheet, sent req to update funeral home on face sheet at facility	0.10	64.000	\$6.40
05/03/2016	P/c to SNF -online w/MCR - f/u doc - review info - prepare doc - update log	0.30	64.000	\$19.20
05/03/2016	call to daughter, email, update Vitas IPU	1.00	64.000	\$64.00
05/04/2016	f/u snf, snf search, fax, call to daughter, f/u IPU	1.50	64.000	\$96.00
05/05/2016	research information/gather information	0.30	64.000	\$19.20
05/05/2016	Call from attorney's office regarding TPP, reviewed and explained the situation	0.30	64.000	\$19.20
05/05/2016	Comm w/bank	0.10	64.000	\$6.40
05/05/2016	snf search, phone calls, fax, email	1.00	64.000	\$64.00
05/06/2016	Comm re amount due, confirm payment, draft check	0.20	64.000	\$12.80
05/06/2016	updated address in EMS, 2 p/c's from Sunbelt, faxed LOG, emailed DD	0.10	64.000	\$6.40
05/06/2016	Scan/email Fairwinds letter	0.10	64.000	\$6.40
05/06/2016	f/u call, email, text, snf placement, calls to daughter	1.50	64.000	\$96.00
05/09/2016	Fwd msg to CM	0.10	64.000	\$6.40
05/09/2016	p/c from [REDACTED] emailed MK	0.10	64.000	\$6.40
05/09/2016	email	0.10	64.000	\$6.40
05/09/2016	Visits to ward at SNF, spoke to sw, chart review completed	1.00	64.000	\$64.00

Court Approved hourly rate - \$64/hour

Ms. Fierle submitted an invoice to AdventHealth for another ward on 11/01/16 for October 2016 guardian fees totaling \$2,282.32. The same fees for October 2016 were submitted to the Court in July 2017 for a total of \$1,223.92 and paid from the ward's funds.

In addition to guardian fees, other expenses for the benefit of Ms. Fierle's wards were also approved for payment multiple times—once by AdventHealth and again from the ward's assets. These payments included attorney fees, home care services, and rent payments.

According to F.S. 825.103, a breach of a fiduciary duty to an elderly person or disabled adult by the guardian occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services. As the expenses were already reimbursed, the ward did not receive any goods or services in exchange for the monies paid.

#### **Additional Considerations Regarding Duplicate Guardian Payments**

**Trusts** Many of the guardianship cases involved wards who had established trust accounts. Detailed trust account information is typically not submitted to the Court in the guardianship process. However, trust funds might be used for guardian fees, attorney fees, and expenses of the ward. Therefore, there is a risk that fees could also be reimbursed multiple times (from trust assets, the wards' assets, and other sources) without detection. We did not have access to any trust account statements to verify whether any of the AdventHealth expenses were also reimbursed from trust accounts.

**Volume, Time, and Complexity Considerations** Duplicate billings between AdventHealth and documents filed with the Court are difficult to identify because annual guardianship accountings can be hundreds of pages long and have to be carefully reviewed for each charge. Due to the limited time available for this investigation and the large number of documents, all invoices and supporting documentation could not be evaluated. We believe that there are likely additional payments made from the wards' assets that were already reimbursed by AdventHealth that were not identified as part of this limited investigation.

### **3. Undisclosed Relationships and Control of Assets Prior to Guardianship**

A guardianship case is initiated with a Petition for Guardianship. According to F.S. 744.334, the petition must include specific information, including any previous relationship of the proposed guardian to the ward.

We compared invoice dates with case initiation dates for each Orange County guardianship case where Ms. Fierle submitted invoices to AdventHealth. In 53% (92 of 173) of the cases, invoices were submitted to AdventHealth at least one month before the guardianship case was initiated.

One case included 28 invoices totaling \$7,640 over the three-year period prior to the guardianship case. In this case, the first invoice was submitted to AdventHealth in December 2011. However, the guardianship case was not initiated until October 27, 2014. The petition submitted by Ms. Fierle stated, “The relationship and previous association of the proposed guardian to the ward is none.” However, Ms. Fierle had a continuing relationship with the ward for three years prior to the guardianship.

We reviewed the petitions submitted in an additional 10 of the 92 cases where Ms. Fierle billed for services at least one month prior to filing for guardianship. None of the 10 petitions disclosed the prior existing relationship. This statement should have been included to inform the Court of the prior relationship with the ward—to evaluate for a potential conflict of interest. The petitioner and the petitioner’s attorney must sign a written declaration on each petition attesting to the accuracy of the information provided. This statement acknowledges, “Under penalties of perjury, I declare that I have read the foregoing, and that the facts alleged are true, to the best of my knowledge and belief.”

Ms. Fierle submitted 8 of the 10 petitions, and AdventHealth submitted the other two petitions reviewed. Both parties should have been aware of the previous relationship based on the prior invoices submitted by Ms. Fierle.

The invoices also show numerous instances where Ms. Fierle accessed bank information and accounts prior to becoming a guardian. Clerk of Courts staff review the initial inventory filed with the Court. However, the staff’s analysis typically begins on the date the guardianship begins—which is the date the Letters of Guardianship are issued. If the guardian is accessing and managing the ward’s assets before the guardian is

appointed, the Clerk's review would only include the records after the Letter of Guardianship is issued. This increases the risk that assets may be misappropriated.

In addition to Ms. Fierle's activities with financial assets, we identified an invoice that showed her involvement with a ward's personal property before she was appointed as a guardian. The invoice noted the following entries:

- "The ward's apartment manager was contacted and given permission to, "empty out apt, collect personal items, docs, mail, etc for pickup/delivery to gdn".
- "CM went to client's apartment bldg. to meet w/admin. And pick up mail, belongings of value (very few) and keys to car; was assisted with items as very heavy; client's spouse's ashes also given to CM; delivery of all items to office for gdn".

Further, there was no notation included on any of the invoices indicating that the ward's personal items, including her husband's ashes were delivered to the ward. Here again, details of this relationship were not disclosed to the Court on the petition for guardianship.

#### **4. Duplicate Payments by AdventHealth for Identical Services**

Numerous invoices from both guardianship and non-guardianship cases included duplicate charges on invoices. We compared invoice transactions for some individuals over multiple months and identified charges that had the same date, description, hours, rate, and total charge.

The payment file listed an additional 20 invoices that were paid twice. Each of the payments listed the check numbers associated with each payment. This clearly indicates that Ms. Fierle was reimbursed multiple times for the same invoice. The total amount of overpayment related to these invoices was \$8,097.

All of the duplicate payments referenced in this section are related to guardian fee payments by AdventHealth. The duplicate guardian fees were not paid from guardianship assets. However, by submitting duplicate billings to AdventHealth, the guardian receives private gain from her position as the guardian. F.S. 744.446 prohibits guardians from using their positions for private gain.

## 5. Other Billing and Service Irregularities

### Payments to Ms. Fierle for Cases Assigned to Other Guardians

We identified Orange County guardianship cases assigned to other guardians although AdventHealth made payments to Ms. Fierle.

One case was assigned to Seniors First, a non-profit organization that provides services to the community's vulnerable elderly. However, Ms. Fierle submitted three invoices for "Case Management Services" on this matter. The ward died three months after case initiation. Ms. Fierle submitted invoices for the entire time period when the case was assigned to Seniors First. Court records confirm that Seniors First was the assigned guardian from case initiation until it was discharged after the ward's death.

We also identified cases where a family member was assigned as the guardian. However, Ms. Fierle received payments from AdventHealth.

### Unsupported or Duplicate Expense Billings

Many of the invoices submitted by Ms. Fierle included generic descriptions and/or no support for expense reimbursements or fees for services was provided by AdventHealth with the invoices. For example, invoices were submitted with only a vague description of "Case Management Services". No date of service or hours worked was included on the invoices. The only identifying information included on the invoices was the name of the individual and total amount charged. One monthly invoice listed one entry for case management totaling \$1,485 with no detailed description.

Additionally, expense reimbursements were included on invoices and no receipts were provided to substantiate the expenses. We identified invoices that appear to be duplicate billings for the same services billed for two different wards. Both invoices were dated 12/01/2014 and exceeded \$1,000:

The two invoices each list these identical descriptions:

- 11/07/14 – "PC to Angel Pharmacy to discuss amount owed for client. Comm. w RF. Paid and picked up meds at Angel Pharmacy and delivered to ALF."
- 11/14/14 – "Comm w South Orange Ave pharmacy to explain concerns and requesting transfer of meds to the facility. Comm w Leoni regarding clients."
- 11/17/14 – "PC to HOC Pharmacy to transfer clients meds to that facility. Faxed med list to facility. Comm. w Leoni regarding new pharmacy."

- 11/24/14 – “Expense Recovery: Angel’s Pharmacy”

### **Guardian Fees Related to a Case Identified in Previous Investigative Report**

In the previous investigative report issued on July 8<sup>th</sup>, we identified an instance where the professional guardian may not have acted in the ward’s best interest. The previous report stated:

*The Ward sent the Clerk of Court’s Office a hand written letter on 04/21/2017 with a copy of a lien sale notice for her personal storage unit. She also wrote directly on the sale notice that it needed to be paid. The storage unit bill totaled \$299.28, including rent of \$86.28, insurance of \$16, and nonpayment related fees of \$197. According to a public notice in the Apopka Chief, the contents were scheduled for auction on June 20, 2017, two months after her plea to pay the bill was recorded in the case. There is no documentation showing the Professional Guardian paid the storage fee. There is no evidence that the belongings were recovered for the Ward or next of kin.*

After reviewing the invoices submitted to AdventHealth by Ms. Fierle related to this ward, we identified the following entries:

- 03/21/17 “p/c from [ward name redacted] regarding a storage unit bill, emailed RF”
- 03/28/17 “communication regarding calls regarding storage and communication regarding issue with endo doctor”
- 03/30/17 “Visit client at Metro West SNF. Discussed pending move and storage unit.”
- 03/31/17 “bill paying, ie. Reviewing bill & writing checks”
- 04/04/17 “phone call from [ward name redacted] regarding storage, communication with Rebecca Fierle”
- 04/06/17 “phone call from [ward name redacted] regarding storage unit, emailed Rebecca Fierle”
- 04/11/17 “Call regarding storage units, emailed to care managers”
- 04/30/17 “reviewing ward’s bills and financial status and writing checks accordingly”
- 05/30/17 “phone call form [ward name redacted] regarding belongings, emailed case manager”

The invoices listed four phone calls from the ward to the professional guardian<sup>8</sup> regarding the storage unit bill and her belongings. There were an additional three dates noted where the storage unit was discussed and two entries for paying bills and writing

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<sup>8</sup> Or one of her employees

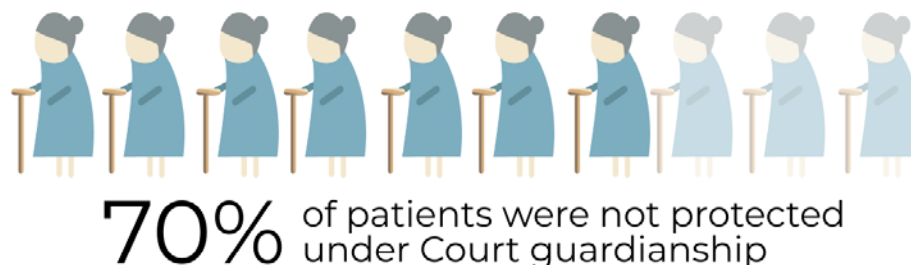
checks during this time. For these nine invoice items, the guardian was paid \$288.75 to discuss the storage unit and pay bills. However, the storage unit bill of \$299.28 was not paid to keep the ward's possessions from being sold at auction. It should also be noted that the total amount of all invoices paid to Ms. Fierle by AdventHealth related to this ward was \$44,376 over less than four years.

## **Issues Outside the Guardianship Program**

### **6. Ms. Fierle's Compensation and Decisions on Behalf of Patients who have never had Florida Guardianship Law Protection**

Ms. Fierle billed \$3.9 million for services she provided to 682 patients. This amount included billings for two distinct groups of patients. The first group includes 210 patients who were wards in the Florida guardianship system. The second group (Group 2) is the remaining 70% of patients (472 of 682) who were never guardianship wards.

AdventHealth paid Ms. Fierle \$1,100,037 on behalf of the Group 2 patients.



#### **Ms. Fierle's Authority to Make Health Care Decisions on Behalf of Group 2**

Competent individuals are permitted and encouraged to sign durable powers of attorney or health care surrogate forms. This enables people to designate another person to make health care decisions on their behalf if they are ever incapacitated and unable to make those decisions for themselves. If an incapacitated person has never designated someone to act on his or her behalf, a health care proxy can be appointed to make decisions under certain circumstances.

The process to appoint a health care proxy is detailed in F.S. 765.401. However, the statute limits potential health care proxies to eight classes of people—generally family members, close friends, and clinical social workers. It also permits court appointed guardians to serve as health care proxies.

Ms. Fierle is likely not related or a close friend of the Group 2 patients. It does not appear that she would qualify as a proxy—especially since she was not appointed as a guardian in any of the 472 Group 2 cases. Therefore, it is unclear how Ms. Fierle could



have become a health care proxy with the authority to make life and death decisions for Group 2 patients<sup>9</sup>.

It is clear how a guardianship is established under Florida law. However, it is not entirely clear how Ms. Fierle obtained the authority to act and exercise discretion over the Group 2 patients. We identified invoice entries that referenced powers of attorney, health care surrogate designations, or health care proxies. However, we did not have access to patient medical records, contracts, or other documents. Therefore, we cannot confirm how Ms. Fierle gained control over the Group 2 patients' health and financial affairs or whether authority was properly granted to Ms. Fierle.

### **DNRs**

We identified numerous entries referencing DNRs, hospice, and other life and death health care decisions, in the invoices that we reviewed. Therefore, we believe that it is likely that Ms. Fierle obtained DNRs for the Group 2 patients who might still be living or have already died based on these DNRs.

On July 15, 2019, the Court entered an order nullifying all of the DNRs that Ms. Fierle executed on behalf of her Orange County guardianship wards. However, that order provides no protection for the Group 2 patients because they are not under the protection of the Florida guardianship system.

One reason the Court entered that order was evidence showing that Ms. Fierle executed DNRs—even when one of the wards clearly expressed his objection to being placed under a DNR. The Court, law enforcement, and patient families should be aware that Ms. Fierle has made similar critical decisions for the Group 2 patients without the Court's knowledge or approval. Those decisions should be reviewed to confirm that they are appropriate for the Group 2 patients.

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<sup>9</sup> 765.401(1)(a) provides that a treatment decision may be made before the guardian is appointed. However, the statute implies, but does not state, that guardianship proceedings should follow after emergency treatment decisions.

### **Examples of Ms. Fierle's Involvement with Patient Life Prolonging Procedures.**

We identified numerous references included on the invoices of Ms. Fierle's involvement with life prolonging medical decisions. These included:

- "FV to client...well dressed and groomed. Recent hair cut... swears@staff during care...DNR on file." The same individual was invoiced in October 2013 for "Comm re dc plan to SNF w/Hospice etc".
- The following entries were listed on the same invoice:
  - 03/05/18 — "monthly check in with ward – he is still content in his setting. Updated by administrator, no further needs"
  - 03/10/18 — "comm arnp and admin re non-compliant behaviors, DNR status."
- Initial contact by Ms. Fierle with the patient on 08/02/10 according to the invoices. The following entries were also included:
  - 11/09/10, "Ph call with hospice re:proxy"
  - 11/11/10, "Ph call with hospice re:proxy"
  - 11/12/10, "P/C from hospice nurse re: fax copy of proxy"
  - 11/19/10, "numerous calls with hospice"
  - 11/19/10, "Fax DNR to facility"
  - 01/31/11, "FV Client appeared well-dressed and clean. Nsg reports client is stable."
- Entries related to a fourth individual:
  - 10/02/14, "P/C regarding client being admitted today, his history, and needs. PC with SNF regarding DNR status."
  - 10/21/14, "Comm with RF regarding incapacity and DNR status"
  - 10/23/14, "FV to see client at SNF. Client pleasant during visit. He propels himself throughout facility and outside to smoke. Chart reviewed. No concerns expressed by client or staff. No behavior issues at this time. Client adjusting well to SNF."
  - 10/23/14, "evaluated by psychiatrist. No psych meds ordered. No behavior concerns. Incap pending."
  - 12/10/14, "Scan DNR and incap and upload to server"

### **Ms. Fierle's Access and Control Over Assets**

In addition to the health care decisions, we identified numerous instances where Ms. Fierle exercised control over the patients' assets without a petition for guardianship. Ms. Fierle would not be subject to any oversight by the Court in the cases where she did not petition for guardianship. We were unable to determine whether Ms. Fierle or her

employees had the legal authority<sup>10</sup> to access the patients' bank accounts or other assets because no documents were filed with the Court.

The following are examples from the invoices indicating Ms. Fierle was accessing patient financial assets without Court supervision:

- "Told him he has money in account if he needs snacks or anything. States he's ok." The same patient had this entry as well, "Resend estate balance to daughter"
- "reviewing wards bills and financial status and writing checks accordingly"
- "He is medically stable with no needs at this time. He signed documents needed for loan forgiveness."
- "research for life insurance surrender amount"
- One patient had the following entries:
  - "Met with client to discuss a pool trust. He also signed an HCS form naming his sister.
  - "Initial set-up of bank acct in system/prepare check for deposit" Another entry on the same day, "Go to FCB to deposit check"
  - "Visited with client and he signed check for guardian pool trust."

Designation as a health care surrogate would not provide access to financial documents other than to apply for private, public, government, or veterans' benefits to defray the cost of health care. Although other legal documents may have been signed authorizing Ms. Fierle and/or her employees to access assets and make health care decisions, these documents appear to be used by a professional guardian outside of Court supervision to circumvent the Court's oversight.

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<sup>10</sup> or whether they appropriately exercised that authority

## **Appendix A –Applicable Florida Statutes**

### **F.S. 744.108 Guardian and attorney fees and expenses —**

(1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward.

(2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria:

- (a) The time and labor required;
- (b) The novelty and difficulty of the questions involved and the skill required to perform the services properly;
- (c) The likelihood that the acceptance of the particular employment will preclude other employment of the person;
- (d) The fee customarily charged in the locality for similar services;
- (e) The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- (f) The results obtained;
- (g) The time limits imposed by the circumstances;
- (h) The nature and length of the relationship with the incapacitated person; and
- (i) The experience, reputation, diligence, and ability of the person performing the service.

### **F.S. 744.446 Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty. —**

(1) It is essential to the proper conduct and management of a guardianship that the guardian be independent and impartial. The fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law. The guardian may not incur any obligation on behalf of the guardianship which conflicts with the proper discharge of the guardian's duties.

(2) Unless prior approval is obtained by court order, or unless such relationship existed prior to appointment of the guardian and is disclosed to the court in the petition for appointment of guardian, a guardian may not:

(a) Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship;

(3) Any activity prohibited by this section is voidable during the term of the guardianship or by the personal representative of the ward's estate, and the guardian is subject to removal and to imposition of personal liability through a proceeding for surcharge, in addition to any other remedies otherwise available.

**F.S. 765.202 Designation of a health care surrogate —**

(4) If neither the designated surrogate nor the designated alternate surrogate is willing, able, or reasonably available to make health care decisions on behalf of the principal and in accordance with the principal's instructions, the health care facility may seek the appointment of a proxy pursuant to part IV.

**F.S. 765.204 Capacity of principal; procedure —**

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. While a principal has decision-making capacity, the principal's wishes are controlling..."

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the primary or attending physician shall evaluate the principal's capacity and, if the evaluating physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the evaluating physician has a question as to whether the principal lacks capacity, another physician shall also evaluate the principal's capacity, and if the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physician's evaluations in the principal's medical record. If the principal has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the health care facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced...

**F.S. 765.401 The proxy.—**

(1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following

individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

- (a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. 393.063, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;
- (b) The patient's spouse;
- (c) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (d) A parent of the patient;
- (e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;
- (f) An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or
- (g) A close friend of the patient.
- (h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

**F.S. 825.103 Exploitation of an elderly person or disabled adult; penalties.—**

(1) "Exploitation of an elderly person or disabled adult" means:

- (a) Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or
  2. Has a business relationship with the elderly person or disabled adult;
- (b)** Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;
- (c)** Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property. An unauthorized appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:
1. For agents appointed under chapter 709:
    - a. Committing fraud in obtaining their appointments;
    - b. Abusing their powers;
    - c. Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or
    - d. Acting contrary to the principal's sole benefit or best interest; or
  2. For guardians and trustees who are individuals and who are appointed under chapter 736 or chapter 744:
    - a. Committing fraud in obtaining their appointments;
    - b. Abusing their powers; or
    - c. Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;
    - d. Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. This paragraph only applies to the following types of accounts:

1. Personal accounts;
  2. Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or
  3. Convenience accounts created in accordance with s. 655.80; or
- e. Intentionally or negligently failing to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult.



**Appendix B—Cases Where Guardian Received More than \$20,000**

Ward	Total Charges	No. of Invoices	Avg. Amount per Invoice	Ward	Total Charges	No. of Invoices	Avg. Amount per Invoice
1	\$50,871	54	\$942	27	\$24,449	32	\$764
2	\$47,381	35	\$1,354	28	\$24,352	43	\$566
3	\$44,376	45	\$986	29	\$24,244	45	\$539
4	\$41,828	85	\$492	30	\$24,224	45	\$538
5	\$38,893	59	\$659	31	\$24,188	28	\$864
6	\$38,692	53	\$730	32	\$24,150	31	\$779
7	\$36,414	20	\$1,821	33	\$24,097	46	\$524
8	\$36,275	62	\$585	34	\$24,022	27	\$890
9	\$35,185	65	\$541	35	\$23,498	35	\$671
10	\$33,263	27	\$1,232	36	\$23,332	55	\$424
11	\$32,045	52	\$616	37	\$22,902	53	\$432
12	\$31,669	47	\$674	38	\$22,611	45	\$502
13	\$30,521	86	\$355	39	\$22,594	47	\$481
14	\$29,514	49	\$602	40	\$22,436	45	\$499
15	\$28,832	43	\$671	41	\$22,124	26	\$851
16	\$28,328	51	\$555	42	\$22,111	32	\$691
17	\$27,511	40	\$688	43	\$22,055	38	\$580
18	\$27,361	30	\$912	44	\$21,638	50	\$433
19	\$27,306	54	\$506	45	\$21,622	57	\$379
20	\$26,952	42	\$642	46	\$21,569	27	\$799
21	\$26,779	31	\$864	47	\$21,478	33	\$651
22	\$26,774	41	\$653	48	\$21,211	34	\$624
23	\$26,530	75	\$354	49	\$21,057	27	\$780
24	\$26,240	36	\$729	50	\$20,922	26	\$805
25	\$25,138	28	\$898	51	\$20,441	37	\$552
26	\$25,099	58	\$433				