

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 498

INTRODUCER: Senator Garcia

SUBJECT: Office of Public and Professional Guardians Direct-support Organization

DATE: November 9, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 498 removes the scheduled repeal date for the Foundation for Indigent Guardianship, Inc. which serves as a direct-support organization for the Office of Public and Professional Guardians within the Department of Elder Affairs..

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created non-profit organizations¹ authorized to carry out specific tasks in support of public entities or public causes. The function and purpose of a CSO or DSO are prescribed by an enacting statute and a written contract with the agency the CSO or DSO was created to support.²

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.³ Specifically, the law requires each CSO and DSO to annually submit the following information to the appropriate agency by August 1:⁴

¹ Chapter 617, F.S.

² See ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2017), Rule 10.720(1)(b) and (d) available at https://flauditor.gov/pages/pdf_files/10_700.pdf (last visited November 7, 2017).

³ Section 3, ch. 2014-96, L.O.F

⁴ Section 20.058(1), F.S.

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

Additionally, the information submitted annually by a CSO or DSO must be available on the respective agency's website along with a link to the CSO or DSO's website, if one exists.⁶ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting the required information to the agency and posting the information on the agency's website.⁷ The contract must include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.⁸ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the CSO or DSO.⁹

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by each CSO or DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the CSO or DSO.¹⁰

Any law creating, or authorizing the creation of a CSO or DSO must state that the authorization for the organization repeals on October 1 of the 5th year after enactment unless reviewed and reenacted by the Legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹¹

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹² The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO or CSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. Additionally, the Auditor

⁵ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁶ Section 20.058(2), F.S.

⁷ Section 20.058(4), F.S.

⁸ Chapter 2017-75, L.O.F.

⁹ Section 20.058(4), F.S.

¹⁰ Section 20.058(3), F.S.

¹¹ Section 20.058(5), F.S.

¹² The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹³

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO to adopt a code of ethics. The code of ethics must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹⁴ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must post its code of ethics on its website.¹⁵

The Department of Elder Affairs

The Florida Constitution provides that the Legislature may create a Department of Elderly Affairs (DOEA or department) and prescribe its duties.¹⁶ In addition to the Florida Constitution, the Florida Statutes provide that the department shall be the state unit on aging as defined in the federal Older Americans Act of 1965, as amended, and shall exercise all responsibilities pursuant to that act.¹⁷ The department has served as the primary state agency for administering human services programs for elders and developing policy recommendations for long-term care since 1992.¹⁸ The department provides most of its direct services through its Division of Statewide Community-Based Services, which works through the state's eleven Area Agencies on Aging and local service providers to deliver essential services to a vital segment of the population. The department also directly administers a wide range of programs, ranging from the Long-Term Care Ombudsman Program, Office of Public and Professional Guardians, and Communities for a Lifetime to SHINE (Serving Health Insurance Needs of Elders) and CARES (Comprehensive Assessment and Review for Long-Term Care Services).¹⁹

The Office of Public and Professional Guardians

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.²⁰ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the department as the Office of Public and Professional Guardians (Office)²¹ and expanded the Office's responsibilities. The expansion of the Office's oversight of professional guardians followed reports of abuse and inappropriate behavior by professional guardians. The Office now regulates professional guardians with certain disciplinary and enforcement powers. The Office is required to review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the Office.²²

¹³ Section 11.45(3), F.S.

¹⁴ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹⁵ Section 112.3251, F.S.

¹⁶ FLA.CONST. art. IV, s. 12, 1988.

¹⁷ Section 20.41, F.S.

¹⁸ Department of Elder Affairs, 2018 Agency Legislative Bill Analysis, SB 498, October 17, 2017.

¹⁹ *Id.*

²⁰ Section 744.7021, F.S.

²¹ Chapter 2016-40, L.O.F. Section 744.7021, F.S. was renumbered as s. 744.2001, F.S.

²² Section 744.2004, F.S.

Foundation for Indigent Guardianship, Inc.

In 2002, the Legislature authorized the Statewide Public Guardianship Office to create a direct-support organization for the direct or indirect benefit of the Office by conduct programs and activities; raising funds; request and receive grants, gifts, and bequests of moneys; and making expenditures to or for the direct or indirect benefit of the Office.²³

The Office established the Foundation for Indigent Guardianship, Inc. (FIG) as its direct-support organization. The Secretary of the department appoints the members of the board of directors. In 2006, FIG founded The Florida Public Guardianship Pooled Special Needs Trust (Trust) with the sole purpose of helping people with disabilities qualify for or maintain means-tested public benefits, such as Medicaid, Supplemental Security Income (SSI), food assistance and public housing while potentially benefitting Florida's statewide public guardianship program.²⁴ Since that date, FIG has distributed over \$1,000,000 to public guardianship programs.

The Foundation also provides complimentary educational opportunities for the staff of public guardianship programs as well as other educational projects to raise awareness to educate the public about the needs of public guardians and those they serve, to assist the livelihood and general welfare of Florida-resident elders in need of a public guardian as well as those persons with cognitive impairments who are indigent and have no family or friends to care for their needs.²⁵ The foundation is set to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature.²⁶ The Foundation meets all of the statutory requirements to remain in existence.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal date for the Foundation for Indigent Guardianship which serves as a direct-support organization for the Office of Public and Professional Guardians within the Department of Elder Affairs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ Chapter 2002-195, L.O.F.

²⁴ Department of Elder Affairs, 2018 Agency Legislative Bill Analysis, SB 498, October 17, 2017.

²⁵ *Id.*

²⁶ Chapter 2016-40, L.O.F. Section 744.2105, F.S. In 2016, s. 744.7082, F.S., was renumbered as s. 744.2105, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends s. 744.2105 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.