

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Hage offered the following:

Amendment (with title amendment)

5 Remove lines 58-390 and insert:

6 (b) In conjunction with proceedings in court, it is in the
 7 best interest of an elder, his or her family members, and
 8 legally recognized decisionmakers to have access to a
 9 nonadversarial process to resolve disputes relating to the elder
 10 which focuses on the elder's wants, needs, and best interests.
 11 Such a process will protect and preserve the elder's exercisable
 12 rights.

13 (c) By recognizing that every elder, including those whose
 14 capacity is being questioned, has unique needs, interests, and
 15 differing abilities, the Legislature intends for this section to
 16 promote the public welfare by establishing a unique dispute

Amendment No.1

17 resolution option to complement and enhance, not replace, other
18 services, such as the provision of legal information or legal
19 representation; financial advice; individual or family therapy;
20 medical, psychological, or psychiatric evaluation; or mediation,
21 specifically for issues related to the care and needs of elders.
22 The Legislature intends that this section be liberally construed
23 to accomplish these goals.

24 (2) DEFINITIONS.—As used in this section, the term:

25 (a) "Action," for purposes of using eldercaring
26 coordination solely to address disputes regarding the care and
27 safety of the elder, means a proceeding in which a party sought
28 or seeks a judgment or order from the court to:

29 1. Determine if someone is or is not incapacitated pursuant
30 to s. 744.331.

31 2. Appoint or remove a guardian or guardian advocate.

32 3. Review any actions of a guardian.

33 4. Execute an investigation pursuant to s. 415.104.

34 5. Review an agent's actions pursuant to s. 709.2116.

35 6. Review a proxy's decision pursuant to s. 765.105.

36 7. Enter an injunction for the protection of an elder under
37 s. 825.1035.

38 8. Follow up on a complaint made to the Office of Public
39 and Professional Guardians pursuant to s. 744.2004.

40 9. At the discretion of the presiding judge, address any
41 other matters pending before the court which involve the care

Amendment No.1

42 and safety of an elder.

43
44 This definition does not include actions brought under chapters
45 732, 733, and 736.

46 (b) "Care and safety" means the condition of the aging
47 person's general physical, mental, emotional, psychological, and
48 social well-being. This definition does not include a
49 determination of capacity by the court under s. 744.331(5)-(6).
50 Unless the parties agree otherwise, this definition does not
51 include matters relating to the elder's estate planning, elder's
52 agent designations under chapter 709, elder's surrogate
53 designations under chapter 765, trusts in which the elder is a
54 grantor, fiduciary, or beneficiary, or other similar financially
55 focused matters.

56 (c) "Elder" means a person 60 years of age or older who is
57 alleged to be suffering from the infirmities of aging as
58 manifested by a physical, a mental, or an emotional dysfunction
59 to the extent that the elder's ability to provide adequately for
60 the protection or care of his or her own person or property is
61 impaired.

62 (d) "Eldercaring coordination" means an elder-focused
63 dispute resolution process during which an eldercaring
64 coordinator assists an elder, legally authorized decisionmakers,
65 and others who participate by court order or by invitation of
66 the eldercaring coordinator in resolving disputes regarding the

Amendment No.1

67 care and safety of an elder by:

68 1. Facilitating more effective communication and
69 negotiation and the development of problem-solving skills.

70 2. Providing education about eldercare resources.

71 3. Facilitating the creation, modification, or
72 implementation of an eldercaring plan and reassessing it as
73 necessary to reach a resolution of ongoing disputes concerning
74 the care and safety of the elder.

75 4. Making recommendations for the resolution of disputes
76 concerning the care and safety of the elder.

77 5. With the prior approval of the parties to an action or
78 of the court, making limited decisions within the scope of the
79 court's order of referral.

80 (e) "Eldercaring coordination communication" means an oral
81 or written statement, or nonverbal conduct intended to make an
82 assertion, by, between, or among parties, participants, or the
83 eldercaring coordinator made during the course of eldercaring
84 coordination activity, or prior to an eldercaring coordination
85 activity if made in furtherance of eldercaring coordination. The
86 term does not include statements made during eldercaring
87 coordination which involve the commission of a crime, the intent
88 to commit a crime, or ongoing abuse, exploitation, or neglect of
89 a child or vulnerable adult.

90 (f) "Eldercaring coordinator" means an impartial third
91 person who is appointed by the court or designated by the

Amendment No.1

92 parties and who meets the requirements of subsection (5). The
93 role of the eldercaring coordinator is to assist parties through
94 eldercaring coordination in a manner that respects the elder's
95 need for autonomy and safety.

96 (g) "Eldercaring plan" means a continually reassessed plan
97 for the items, tasks, or responsibilities needed to provide for
98 the care and safety of an elder which is modified throughout
99 eldercaring coordination to meet the changing needs of the elder
100 and which takes into consideration the preferences and wishes of
101 the elder. The plan is not a legally enforceable document, but
102 is meant for use by the parties and participants.

103 (h) "Good cause" means a finding that the eldercaring
104 coordinator:

105 1. Is not fulfilling the duties and obligations of the
106 position;

107 2. Has failed to comply with any order of the court,
108 unless the order has been superseded on appeal;

109 3. Has conflicting or adverse interests that affect his or
110 her impartiality;

111 4. Has engaged in circumstances that compromise the
112 integrity of eldercaring coordination; or

113 5. Has had a disqualifying event occur.

114
115 The term does not include a party's disagreement with the
116 eldercaring coordinator's methods or procedures.

Amendment No.1

117 (i) "Legally authorized decisionmaker" means an individual
118 designated, either by the elder or by the court, pursuant to
119 chapter 709, chapter 744, chapter 747, or chapter 765 who has
120 the authority to make specific decisions on behalf of the elder
121 who is the subject of an action.

122 (j) "Participant" means an individual who is not a party
123 who joins eldercaring coordination by invitation of or with the
124 consent of the eldercaring coordinator but who has not filed a
125 pleading in the action from which the case was referred to
126 eldercaring coordination.

127 (k) "Party" includes the elder who is the subject of an
128 action and any other individual over whom the court has
129 jurisdiction in the current case.

130 (3) REFERRAL.—

131 (a) Upon agreement of the parties to the action, the
132 court's own motion, or the motion of a party to the action, the
133 court may appoint an eldercaring coordinator and refer the
134 parties to eldercaring coordination to assist in the resolution
135 of disputes concerning the care and safety of the elder who is
136 the subject of an action.

137 (b) The court may not refer a party who has a history of
138 domestic violence or exploitation of an elderly person to
139 eldercaring coordination unless the elder and other parties in
140 the action consent to such referral.

141 1. The court shall offer each party an opportunity to

Amendment No.1

142 consult with an attorney or a domestic violence advocate before
143 accepting consent to such referral. The court shall determine
144 whether each party has given his or her consent freely and
145 voluntarily.

146 2. The court shall consider whether a party has committed
147 an act of exploitation as defined in s. 415.102, exploitation of
148 an elderly person or disabled adult as defined in s. 825.103(1),
149 or domestic violence as defined in s. 741.28 against another
150 party or any member of another party's family; engaged in a
151 pattern of behaviors that exert power and control over another
152 party and that may compromise another party's ability to
153 negotiate a fair result; or engaged in behavior that leads
154 another party to have reasonable cause to believe that he or she
155 is in imminent danger of becoming a victim of domestic violence.
156 The court shall consider and evaluate all relevant factors,
157 including, but not limited to, the factors specified in s.
158 741.30(6)(b).

159 3. If a party has a history of domestic violence or
160 exploitation of an elderly person, the court must order
161 safeguards to protect the safety of the participants and the
162 elder and the elder's property, including, but not limited to,
163 adherence to all provisions of an injunction for protection or
164 conditions of bail, probation, or a sentence arising from
165 criminal proceedings.

166 (4) COURT APPOINTMENT.—

248043 - h0441-ln58.docx

Published On: 4/5/2021 3:48:04 PM

Amendment No.1

167 (a) A court appointment of an eldercaring coordinator is
168 for a term of up to 2 years and the court shall conduct review
169 hearings intermittently to determine whether the term should be
170 concluded or extended. Appointments conclude upon expiration of
171 the term or upon discharge by the court, whichever occurs
172 earlier.

173 (b) The order of appointment by the court shall define the
174 scope of the eldercaring coordinator's authority under the
175 appointment in the particular action, consistent with this
176 section.

177 (c) The order shall specify that, notwithstanding the
178 intermittent review hearings under paragraph (a), a party may
179 move the court at any time during the period of appointment for
180 termination of the appointment. Upon the filing of such a
181 motion, the court shall timely conduct a hearing to determine
182 whether to terminate the appointment. Until the court has ruled
183 on the motion, the eldercaring coordination process shall
184 continue. In making the determination, the court shall consider
185 at a minimum:

186 1. The efforts and progress of eldercaring coordination in
187 the action to date;

188 2. The preference of the elder if ascertainable; and

189 3. Whether continuation of the appointment is in the best
190 interests of the elder.

191 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

Amendment No.1

- 192 (a) The court shall appoint qualified eldercaring
193 coordinators who:
- 194 1. Meet one of the following professional requirements:
- 195 a. Are licensed as a mental health professional under
196 chapter 491 and hold at least a master's degree in the
197 professional field of practice;
- 198 b. Are licensed as a psychologist under chapter 490;
- 199 c. Are licensed as a physician under chapter 458 or
200 chapter 459;
- 201 d. Are licensed as a nurse under chapter 464 and hold at
202 least a master's degree;
- 203 e. Are certified by the Florida Supreme Court as a family
204 mediator and hold at least a master's degree;
- 205 f. Are a member in good standing of The Florida Bar; or
- 206 g. Are a professional guardian as defined in s.
207 744.102(17) and hold at least a master's degree.
- 208 2. Have completed all of the following:
- 209 a. Three years of post-licensure or post-certification
210 practice;
- 211 b. A family mediation training program certified by the
212 Florida Supreme Court; and
- 213 c. An eldercaring coordinator training program certified
214 by the Florida Supreme Court. This training must total at
215 least 44 hours and must include advanced tactics for dispute
216 resolution of issues related to aging, illness, incapacity, or

248043 - h0441-ln58.docx

Published On: 4/5/2021 3:48:04 PM

Amendment No.1

217 other vulnerabilities associated with persons 60 years of age or
218 older, as well as elder, guardianship, and incapacity law and
219 procedures and less restrictive alternatives to guardianship;
220 phases of eldercaring coordination and the role and functions of
221 an eldercaring coordinator; the elder's role within eldercaring
222 coordination; family dynamics related to eldercaring
223 coordination; eldercaring coordination skills and techniques;
224 multicultural competence and its use in eldercaring
225 coordination; at least 6 hours on the implications of elder
226 abuse, neglect, and exploitation and other safety issues
227 pertinent to this training; at least 4 hours of ethical
228 considerations pertaining to this training; use of technology
229 within eldercaring coordination; and court-specific eldercaring
230 coordination procedures.

231 3. Have successfully passed a Level 2 background screening
232 as provided in s. 435.04(2) and (3) or are exempt from
233 disqualification under s. 435.07. The prospective eldercaring
234 coordinator must submit a full set of fingerprints to the court
235 or to a vendor, entity, or agency authorized by s. 943.053(13).
236 The court, vendor, entity, or agency shall forward the
237 fingerprints to the Department of Law Enforcement for state
238 processing and the Department of Law Enforcement shall forward
239 the fingerprints to the Federal Bureau of Investigation for
240 national processing. The prospective eldercaring coordinator
241 shall pay the fees for state and federal fingerprint processing.

Amendment No.1

242 The state cost for fingerprint processing shall be as provided
243 in s. 943.053(3)(e) for records provided to persons or entities
244 other than those specified as exceptions therein.

245 4. Have not been a respondent in a final order granting an
246 injunction for protection against domestic, dating, sexual, or
247 repeat violence or stalking or exploitation of an elder or a
248 disabled person.

249 5. Have met any additional qualifications the court may
250 require to address issues specific to the parties.

251 (b) A qualified eldercaring coordinator must be in good
252 standing or in clear and active status with all professional
253 licensing authorities or certification boards to which the
254 eldercaring coordinator is subject.

255 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
256 COORDINATORS.-

257 (a) An eldercaring coordinator must resign and immediately
258 report to the court if he or she no longer meets the minimum
259 qualifications or if any of the disqualifying circumstances
260 occurs.

261 (b) The court shall remove an eldercaring coordinator upon
262 the eldercaring coordinator's resignation or disqualification or
263 upon a finding of good cause shown based on the court's own
264 motion or a party's motion.

265 (c) Upon the court's own motion or upon a party's motion,
266 the court may suspend the authority of an eldercaring

Amendment No.1

267 coordinator pending a hearing on the motion for removal. Notice
268 of hearing on removal must be timely served on the eldercaring
269 coordinator and all parties.

270 (d) If a motion was made in bad faith, a court may, in
271 addition to any other remedy authorized by law, award reasonable
272 attorney fees and costs to a party or an eldercaring coordinator
273 who successfully challenges a motion for removal.

274 (7) SUCCESSOR ELDERCARING COORDINATORS.—If an eldercaring
275 coordinator resigns, is removed, or is suspended from an
276 appointment, the court shall appoint a successor qualified
277 eldercaring coordinator who is agreed to by all parties or, if
278 the parties do not reach agreement on a successor, another
279 qualified eldercaring coordinator to serve for the remainder of
280 the original term.

281 (8) FEES AND COSTS. - The eldercaring coordinator's fees
282 shall be paid in equal portion by each party referred to the
283 eldercaring coordination process by the court. The order of
284 referral shall specify which parties are ordered to the process
285 and the percentage of the eldercaring coordinator's fees that
286 each shall pay. The court may determine the allocation among
287 the parties of fees and costs for eldercaring coordination and
288 may make an unequal allocation based on the financial
289 circumstances of each party, including the elder.

290 (a) A party who is asserting that he or she is unable to
291 pay the eldercaring coordination fees and costs must complete a

Amendment No.1

292 financial affidavit form approved by the presiding court. The
293 court shall consider the party's financial circumstances,
294 including income; assets; liabilities; financial obligations;
295 and resources, including, but not limited to, whether the party
296 can receive or is receiving trust benefits, whether the party is
297 represented by and paying a lawyer, and whether paying the fees
298 and costs of eldercaring coordination would create a substantial
299 hardship.

300 (b) If a court finds that a party is indigent based upon
301 the criteria prescribed in s. 57.082, the court may not order
302 the party to eldercaring coordination unless funds are available
303 to pay the indigent party's allocated portion of the eldercaring
304 coordination fees and costs, which may include funds provided
305 for that purpose by one or more nonindigent parties who consent
306 to paying such fees and costs, or unless insurance coverage or
307 reduced or pro bono services are available to pay all or a
308 portion of such fees and costs. If financial assistance, such as
309 health insurance or eldercaring coordination grants, is
310 available, such assistance must be taken into consideration by
311 the court in determining the financial abilities of the parties.

312 (9) Confidentiality; Privilege; Exceptions.-

313 (a) Except as provided in this section, all eldercaring
314 coordination communications shall be confidential. An
315 eldercaring coordination party, participant, or eldercaring
316 coordinator shall not disclose an eldercaring coordination

Amendment No.1

317 communication to a person other than another eldercaring
318 coordination party, participant, or eldercaring coordinator, or
319 a party's or participant's counsel. A violation of this section
320 may be remedied as provided in paragraph (g). If the eldercaring
321 coordination is court ordered, a violation of this section may
322 also subject the eldercaring coordination participant to
323 sanctions by the court, including, but not limited to, costs,
324 attorney's fees, and eldercaring coordinator's fees.

325 (b) An eldercaring coordination party, participant, or
326 eldercaring coordinator has a privilege to refuse to testify and
327 to prevent any other person from testifying in a subsequent
328 proceeding regarding eldercaring coordination communications.

329 (c) Notwithstanding paragraphs (a) and (b), there is no
330 confidentiality or privilege attached to a signed written
331 agreement reached during eldercaring coordination, unless the
332 parties agree otherwise, or for any eldercaring coordination
333 communication:

334 1. Necessary to identify, authenticate, confirm, or deny a
335 written and signed agreement entered into by the parties during
336 eldercaring coordination.

337 2. Necessary to identify an issue for resolution by the
338 court, including to support a motion to terminate eldercaring
339 coordination, without otherwise disclosing communications made
340 by any party, participant, or the eldercaring coordinator.

341 3. Limited to the subject of a party's compliance with the

Amendment No.1

342 order of referral to eldercaring coordination, orders for
343 psychological evaluation, court orders or health care provider
344 recommendations for counseling, or court orders for substance
345 abuse testing or treatment.

346 4. Necessary to determine the qualifications of an
347 eldercaring coordinator or to determine the immunity and
348 liability of an eldercaring coordinator who has acted in bad
349 faith or with malicious purpose or in a manner exhibiting wanton
350 and willful disregard for the rights, safety, or property of the
351 parties pursuant to subsection (11).

352 5. The parties agree may be disclosed or for which
353 privilege against disclosure has been waived by all parties.

354 6. Made in the event the eldercaring coordinator needs to
355 contact persons outside of the eldercaring coordination process
356 to give or obtain information that furthers the eldercaring
357 coordination process.

358 7. That requires a mandatory report pursuant to chapter 39
359 or chapter 415 solely for the purpose of making the mandatory
360 report to the entity requiring the report.

361 8. Necessary to protect any person from future acts that
362 would constitute domestic violence under chapter 741; child
363 abuse, neglect, or abandonment under chapter 39; or abuse,
364 neglect or exploitation of an elderly or disabled adult under
365 chapter 415 or chapter 825, or are necessary in an investigation
366 conducted under s. 744.2004 or a review conducted under s

248043 - h0441-ln58.docx

Published On: 4/5/2021 3:48:04 PM

Amendment No.1

367 744.368 (5) .

368 9. Offered to report, prove, or disprove professional
369 misconduct alleged to have occurred during eldercaring
370 coordination, solely for the internal use of the body conducting
371 the investigation of such misconduct.

372 10. Offered to report, prove, or disprove professional
373 malpractice alleged to have occurred during eldercaring
374 coordination solely for the professional malpractice proceeding.

375 11. Willfully used to plan a crime, commit or attempt to
376 commit a crime, conceal ongoing criminal activity, or threaten
377 violence.

378 (d) An eldercaring coordination communication disclosed
379 under any provision of subparagraph (c)1., subparagraph (c)2.,
380 subparagraph (c)5., subparagraph (c)8., or subparagraph (c)9.
381 remains confidential and is not discoverable or admissible for
382 any other purpose, unless otherwise permitted by this section.

383 (e) Information that is otherwise admissible or subject to
384 discovery does not become inadmissible or protected from
385 discovery by reason of its disclosure or use in eldercaring
386 coordination.

387 (f) A party that discloses or makes a representation about
388 a privileged eldercaring coordination communication waives that
389 privilege, but only to the extent necessary for the other party
390 or parties to respond to the disclosure or representation.

391 (g)1. Any eldercaring coordination party or participant

Amendment No.1

392 who knowingly and willfully discloses an eldercaring
393 coordination communication in violation of this subsection
394 shall, upon application by any party to a court of competent
395 jurisdiction, be subject to remedies, including:
396 a. Equitable relief.
397 b. Compensatory damages.
398 c. Contribution to the other party or parties' attorney's
399 fees, the other party's portion of the eldercaring coordinator
400 fees, and the other party's portion of the costs incurred in the
401 eldercaring coordination process.
402 d. Reasonable attorney's fees and costs incurred in the
403 application for remedies under this section.
404 2. Notwithstanding any other law, an application for
405 relief filed under this paragraph may not be commenced later
406 than two years after the date on which the party had a
407 reasonable opportunity to discover the breach of
408 confidentiality, but in no case more than 4 years after the
409 breach.
410 3. An eldercaring coordination party or participant shall
411 not be subject to a civil action under this paragraph for lawful
412 compliance with the provisions of s. 119.07.

T I T L E A M E N D M E N T

Between lines 13 and 14, insert:

Amendment No.1

417 | allowing a party to file a motion to terminate such
418 | appointments;