

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Hage offered the following:

2
3 **Amendment (with title amendment)**

4 Remove lines 281-507 and insert:

5 eldercaring coordination procedures. Pending certification of a
6 training program by the Florida Supreme Court, the eldercaring
7 coordinator must document completion of training that satisfies
8 the hours and the elements prescribed in this sub-subparagraph.

9 3. Have successfully passed a Level 2 background screening
10 as provided in s. 435.04(2) and (3) or are exempt from
11 disqualification under s. 435.07. The prospective eldercaring
12 coordinator must submit a full set of fingerprints to the court
13 or to a vendor, entity, or agency authorized by s. 943.053(13).

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14 The court, vendor, entity, or agency shall forward the
15 fingerprints to the Department of Law Enforcement for state
16 processing and the Department of Law Enforcement shall forward
17 the fingerprints to the Federal Bureau of Investigation for
18 national processing. The prospective eldercaring coordinator
19 shall pay the fees for state and federal fingerprint processing.
20 The state cost for fingerprint processing shall be as provided
21 in s. 943.053(3)(e) for records provided to persons or entities
22 other than those specified as exceptions therein.

23 4. Have not been a respondent in a final order granting an
24 injunction for protection against domestic, dating, sexual, or
25 repeat violence or stalking or exploitation of an elder or a
26 disabled person.

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

29 (b) A qualified eldercaring coordinator must be in good
30 standing or in clear and active status with all professional
31 licensing authorities or certification boards to which the
32 eldercaring coordinator is subject.

33 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
34 COORDINATORS.—

35 (a) An eldercaring coordinator must resign and immediately
36 report to the court if he or she no longer meets the minimum
37 qualifications or if any of the disqualifying circumstances
38 occurs.

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39 (b) The court shall remove an eldercaring coordinator upon
40 the eldercaring coordinator's resignation or disqualification or
41 upon a finding of good cause shown based on the court's own
42 motion or a party's motion.

43 (c) Upon the court's own motion or upon a party's motion,
44 the court may suspend the authority of an eldercaring
45 coordinator pending a hearing on the motion for removal. Notice
46 of hearing on removal must be timely served on the eldercaring
47 coordinator and all parties.

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

52 (7) SUCCESSOR ELDERCARING COORDINATORS.—If an eldercaring
53 coordinator resigns, is removed, or is suspended from an
54 appointment, the court shall appoint a successor qualified
55 eldercaring coordinator who is agreed to by all parties or, if
56 the parties do not reach agreement on a successor, another
57 qualified eldercaring coordinator to serve for the remainder of
58 the original term.

59 (8) FEES AND COSTS.—The eldercaring coordinator's fees
60 shall be paid in equal portions by each party referred to the
61 eldercaring coordination process by the court. The order of
62 referral shall specify which parties are ordered to the process
63 and the percentage of the eldercaring coordinator's fees that

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64 each shall pay. The court may determine the allocation among the
65 parties of fees and costs for eldercaring coordination and may
66 make an unequal allocation based on the financial circumstances
67 of each party, including the elder.

68 (a) A party who is asserting that he or she is unable to
69 pay the eldercaring coordination fees and costs must complete a
70 financial affidavit form approved by the presiding court. The
71 court shall consider the party's financial circumstances,
72 including income; assets; liabilities; financial obligations;
73 and resources, including, but not limited to, whether the party
74 can receive or is receiving trust benefits, whether the party is
75 represented by and paying a lawyer, and whether paying the fees
76 and costs of eldercaring coordination would create a substantial
77 hardship.

78 (b) If a court finds that a party is indigent based upon
79 the criteria prescribed in s. 57.082, the court may not order
80 the party to eldercaring coordination unless funds are available
81 to pay the indigent party's allocated portion of the eldercaring
82 coordination fees and costs, which may include funds provided
83 for that purpose by one or more nonindigent parties who consent
84 to paying such fees and costs, or unless insurance coverage or
85 reduced or pro bono services are available to pay all or a
86 portion of such fees and costs. If financial assistance, such as
87 health insurance or eldercaring coordination grants, is

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88 available, such assistance must be taken into consideration by
89 the court in determining the financial abilities of the parties.

90 (9) CONFIDENTIALITY; PRIVILEGE; EXCEPTIONS.-

91 (a) Except as provided in this subsection, all eldercaring
92 coordination communications are confidential. An eldercaring
93 coordination party, participant, or eldercaring coordinator may
94 not disclose an eldercaring coordination communication to a
95 person other than another eldercaring coordination party,
96 participant, or eldercaring coordinator, or a party's or
97 participant's counsel. A violation of this subsection may be
98 remedied as provided in paragraph (g). If the eldercaring
99 coordination is court ordered, a violation of this subsection
100 may also subject the eldercaring coordination participant to
101 sanctions by the court, including, but not limited to, costs,
102 attorney fees and costs, and eldercaring coordinator's fees and
103 costs.

104 (b) An eldercaring coordination party, participant, or
105 eldercaring coordinator has a privilege to refuse to testify and
106 to prevent any other person from testifying in a subsequent
107 proceeding regarding eldercaring coordination communications.

108 (c) Notwithstanding paragraphs (a) and (b), there is no
109 confidentiality or privilege attached to any signed written
110 agreement reached during eldercaring coordination, unless the
111 parties agree otherwise, or to any eldercaring coordination
112 communication:

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113 1. Necessary to identify, authenticate, confirm, or deny a
114 written and signed agreement entered into by the parties during
115 eldercaring coordination.

116 2. Necessary to identify an issue for resolution by the
117 court, including to support a motion to terminate eldercaring
118 coordination, without otherwise disclosing communications made
119 by any party, participant, or the eldercaring coordinator.

120 3. Limited to the subject of a party's compliance with the
121 order of referral to eldercaring coordination, orders for
122 psychological evaluation, court orders or health care provider
123 recommendations for counseling, or court orders for substance
124 abuse testing or treatment.

125 4. Necessary to determine the qualifications of an
126 eldercaring coordinator or to determine the immunity and
127 liability of an eldercaring coordinator who has acted in bad
128 faith or with malicious purpose or in a manner exhibiting wanton
129 and willful disregard for the rights, safety, or property of the
130 parties pursuant to subsection (11).

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

133 6. Made in the event the eldercaring coordinator needs to
134 contact persons outside of the eldercaring coordination process
135 to give or obtain information that furthers the eldercaring
136 coordination process.

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137 7. That requires a mandatory report pursuant to chapter 39
138 or chapter 415 solely for the purpose of making the mandatory
139 report to the entity requiring the report.

140 8. Necessary to protect any person from future acts that
141 would constitute domestic violence under chapter 741; child
142 abuse, neglect, or abandonment under chapter 39; or abuse,
143 neglect, or exploitation of an elderly or disabled adult under
144 chapter 415 or chapter 825, or are necessary in an investigation
145 conducted under s. 744.2004 or a review conducted under s
146 744.368(5).

147 9. Offered to report, prove, or disprove professional
148 misconduct alleged to have occurred during eldercaring
149 coordination, solely for the internal use of the body conducting
150 the investigation of such misconduct.

151 10. Offered to report, prove, or disprove professional
152 malpractice alleged to have occurred during eldercaring
153 coordination solely for the professional malpractice proceeding.

154 11. Willfully used to plan a crime, commit or attempt to
155 commit a crime, conceal ongoing criminal activity, or threaten
156 violence.

157 (d) An eldercaring coordination communication disclosed
158 under any provision of subparagraph (c)1., subparagraph (c)2.,
159 subparagraph (c)5., subparagraph (c)8., or subparagraph (c)9. is
160 confidential and is not discoverable or admissible for any other
161 purpose, unless otherwise permitted by this section.

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162 (e) Information that is otherwise admissible or
163 discoverable does not become inadmissible or protected from
164 discovery by reason of its disclosure or use in eldercaring
165 coordination.

166 (f) A party that discloses or makes a representation about
167 a privileged eldercaring coordination communication waives that
168 privilege, but only to the extent necessary for the other party
169 or parties to respond to the disclosure or representation.

170 (g)1. An eldercaring coordination party or participant who
171 knowingly and willfully discloses an eldercaring coordination
172 communication in violation of this subsection, upon application
173 by any party to a court of competent jurisdiction, is subject to
174 remedies, including:

175 a. Equitable relief.

176 b. Compensatory damages.

177 c. Contribution to the other party's or parties' attorney
178 fees and costs, the other party's or parties' portion of the
179 eldercaring coordinator fees, and the other party's or parties'
180 portion of the costs incurred in the eldercaring coordination
181 process.

182 d. Reasonable attorney fees and costs incurred in the
183 application for remedies under this subsection.

184 2. Notwithstanding any other law, an application for
185 relief filed under this paragraph may not be commenced later
186 than 2 years after the date on which the party had a reasonable

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187 opportunity to discover the breach of confidentiality, but in no
188 case more than 4 years after the breach.

189 3. An eldercaring coordination party or participant is not
190 subject to a civil action under this paragraph for lawful
191 compliance with s. 119.07.

192 (10) EMERGENCY REPORTING TO THE COURT.—

193 (a) An eldercaring coordinator must immediately inform the
194 court by affidavit or verified report, without notice to the
195 parties, if:

196 1. The eldercaring coordinator has made or will make a
197 report pursuant to chapter 39 or chapter 415; or

198 2. A party, including someone acting on a party's behalf,
199 is threatening or is believed to be planning to commit the
200 offense of kidnapping, as defined in s. 787.01(1), upon an
201 elder, or wrongfully removes or is removing the elder from the
202 jurisdiction of the court without prior court approval or
203 compliance with the requirements of s. 744.1098. If the
204 eldercaring coordinator suspects that a party or family member
205 has relocated an elder within this state to protect the elder
206 from a domestic violence situation, the eldercaring coordinator
207 may not disclose the location of the elder unless required by
208 court order.

209 (b) An eldercaring coordinator shall immediately inform
210 the court by affidavit or verified report and serve a copy of
211 such affidavit or report on each party upon learning that a

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212 party is the subject of a final order or injunction of
213 protection against domestic violence or exploitation of an
214 elderly person or has been arrested for an act of domestic
215 violence or exploitation of an elderly person.

216 (11) IMMUNITY FROM AND LIMITATION OF LIABILITY.—

217 (a) A person who is appointed or employed to assist the
218 body designated to perform duties relating to disciplinary
219 proceedings involving eldercaring coordinators has absolute
220 immunity from liability arising from the performance of his or
221 her duties while acting within the scope of his or her appointed
222 functions or duties of employment.

223 (b) An eldercaring coordinator who is appointed by the
224 court is not liable for civil damages for any act or omission
225 within the scope of his or her duties under an order of referral
226 unless such person acted in bad faith or with malicious purpose
227 or in a manner exhibiting wanton and willful disregard for the
228 rights, safety, or property of the parties.

229 (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme
230 Court shall establish minimum standards and procedures for the
231 qualification, ethical conduct, discipline, and training and
232 education of eldercaring coordinators who serve under this
233 section. Pending establishment of minimum standards and
234 procedures for the discipline of eldercaring coordinators, the
235 order of referral by the court may address procedures governing
236 complaints against the appointed eldercaring coordinator

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237 consistent with this section. The Florida Supreme Court may
238 appoint or employ such personnel as are necessary to assist the
239 court in exercising its powers and performing its duties under
240 this section.

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

244 Remove line 42 and insert:
245 procedures for eldercaring coordinators; authorizing a
246 court to address procedures governing complaints
247 against appointed eldercaring coordinators under
248 certain circumstances; authorizing

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