

1                                   A bill to be entitled  
2           An act relating to an elder-focused dispute resolution  
3           process; creating s. 44.407, F.S.; providing  
4           legislative findings; defining terms; authorizing the  
5           courts to appoint an eldercaring coordinator and refer  
6           certain parties and elders to eldercaring  
7           coordination; prohibiting the courts from referring  
8           certain parties to eldercaring coordination without  
9           the consent of the elder and other parties to the  
10          action; specifying the duration of eldercaring  
11          coordinator appointments; requiring the courts to  
12          conduct intermittent review hearings regarding the  
13          conclusion or extension of such appointments;  
14          providing qualifications and disqualifications for  
15          eldercaring coordinators; providing for the removal  
16          and suspension of authority of certain eldercaring  
17          coordinators; requiring that notice of hearing on  
18          removal of a coordinator be timely served; authorizing  
19          the courts to award certain fees and costs under  
20          certain circumstances; requiring the court to appoint  
21          successor eldercaring coordinators under certain  
22          circumstances; authorizing the courts to make certain  
23          determinations based on the fees and costs of  
24          eldercaring coordination; providing that certain  
25          communications between the parties, participants, and

26 | eldercaring coordinators are confidential; providing  
 27 | exceptions to confidentiality; providing requirements  
 28 | for emergency reporting to courts under certain  
 29 | circumstances; providing immunity from liability for  
 30 | certain eldercaring coordinators under specified  
 31 | circumstances; requiring the Florida Supreme Court to  
 32 | establish certain minimum standards and procedures for  
 33 | eldercaring coordinators; authorizing the Florida  
 34 | Supreme Court to appoint or employ personnel for  
 35 | specified purposes; providing an effective date.

36 |  
 37 | Be It Enacted by the Legislature of the State of Florida:

38 |  
 39 | Section 1. Section 44.407, Florida Statutes, is created to  
 40 | read:

41 | 44.407 Elder-focused dispute resolution process.—

42 | (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

43 | (a) Denying an elder a voice in decisions regarding  
 44 | himself or herself may negatively affect the elder's health and  
 45 | well-being, as well as deprive the elder of his or her legal  
 46 | rights. Even if an elder is losing capacity to make major  
 47 | decisions for himself or herself, the elder is still entitled to  
 48 | the dignity of having his or her voice heard.

49 | (b) As an alternative to proceedings in court, it is in  
 50 | the best interest of an elder, his or her family members, and

51 legally recognized decisionmakers to have access to a  
52 nonadversarial process to resolve disputes relating to the elder  
53 which focuses on the elder's wants, needs, and best interests.  
54 Such a process will protect and preserve the elder's exercisable  
55 rights.

56 (c) By recognizing that every elder, including those whose  
57 capacity is being questioned, has unique needs, interests, and  
58 differing abilities, the Legislature intends for this section to  
59 promote the public welfare by establishing a unique dispute  
60 resolution option to complement and enhance, not replace, other  
61 services, such as the provision of legal information or legal  
62 representation; financial advice; individual or family therapy;  
63 medical, psychological, or psychiatric evaluation; or mediation,  
64 specifically for issues related to the care and needs of elders.  
65 The Legislature intends that this section be liberally construed  
66 to accomplish these goals.

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

68 (a) "Action" means a proceeding in which a party sought or  
69 seeks a judgment or an order from the court to:

70 1. Determine if someone is or is not incapacitated  
71 pursuant to s. 744.331.

72 2. Appoint or remove a guardian.

73 3. Undertake an investigation pursuant to s. 415.104.

74 4. Audit an annual guardianship report.

75 5. Review a proxy's decision pursuant to s. 765.105.

76 6. Appoint a guardian advocate pursuant to s. 393.12.

77 7. Enter an injunction to protect an elder under s.  
78 825.1035.

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

81 9. Address advice received by the court from the clerk of  
82 the court pursuant to s. 744.368(5).

83 10. At the discretion of the presiding judge, address  
84 other matters pending before the court which involve the care or  
85 safety of an elder or the security of an elder's property.

86 (b) "Elder" means a person 60 years of age or older who is  
87 alleged to be suffering from the infirmities of aging as  
88 manifested by a physical, a mental, or an emotional dysfunction  
89 to the extent that the elder's ability to provide adequately for  
90 the protection or care of his or her own person or property is  
91 impaired.

92 (c) "Eldercaring coordination" means an elder-focused  
93 dispute resolution process during which an eldercaring  
94 coordinator assists an elder, legally authorized decisionmakers,  
95 and others who participate by court order or by invitation of  
96 the eldercaring coordinator in resolving disputes regarding the  
97 care and safety of an elder by:

98 1. Facilitating more effective communication and  
99 negotiation and the development of problem-solving skills.

100 2. Providing education about eldercare resources.

101        3. Facilitating the creation, modification, or  
102 implementation of an eldercaring plan and reassessing it as  
103 necessary to reach a resolution of ongoing disputes concerning  
104 the care and safety of the elder.

105        4. Making recommendations for the resolution of disputes  
106 concerning the care and safety of the elder.

107        5. With the prior approval of the parties to an action or  
108 of the court, making limited decisions within the scope of the  
109 court's order of referral.

110        (d) "Eldercaring coordination communication" means an oral  
111 or a written statement or nonverbal conduct intended to make an  
112 assertion by or to an eldercaring coordinator or individuals  
113 involved in eldercaring coordination made during an eldercaring  
114 coordination activity, or before the activity if made in  
115 furtherance of eldercaring coordination. The term does not  
116 include statements made during eldercaring coordination which  
117 involve the commission of a crime, the intent to commit a crime,  
118 or ongoing abuse, exploitation, or neglect of a child or a  
119 vulnerable adult.

120        (e) "Eldercaring coordinator" means an impartial third  
121 person who is appointed by the court or designated by the  
122 parties and who meets the requirements of subsection (5). The  
123 role of the eldercaring coordinator is to assist parties through  
124 eldercaring coordination in a manner that respects the elder's  
125 need for autonomy and safety.

126 (f) "Eldercaring plan" means a continually reassessed plan  
127 for the items, tasks, or responsibilities needed to provide for  
128 the care and safety of an elder which is modified throughout  
129 eldercaring coordination to meet the changing needs of the elder  
130 and which takes into consideration the preferences and wishes of  
131 the elder. The plan is not a legally enforceable document, but  
132 is meant for use by the parties and participants.

133 (g) "Good cause" means a finding that the eldercaring  
134 coordinator:

135 1. Is not fulfilling the duties and obligations of the  
136 position;

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

139 3. Has conflicting or adverse interests that affect his or  
140 her impartiality;

141 4. Has engaged in circumstances that compromise the  
142 integrity of eldercaring coordination; or

143 5. Has had a disqualifying event occur.

144

145 The term does not include a party's disagreement with the  
146 eldercaring coordinator's methods or procedures.

147 (h) "Legally authorized decisionmaker" means an individual  
148 designated, either by the elder or by the court, pursuant to  
149 chapter 709, chapter 744, chapter 747, or chapter 765 who has  
150 the authority to make specific decisions on behalf of the elder

151 who is the subject of an action.

152 (i) "Participant" means an individual who joins  
153 eldercaring coordination by invitation of or with the consent of  
154 the eldercaring coordinator but who has not filed a pleading in  
155 the action from which the case was referred to eldercaring  
156 coordination.

157 (j) "Party" includes the elder who is the subject of an  
158 action and any other individual over whom the court has  
159 jurisdiction.

160 (3) REFERRAL.—

161 (a) Upon agreement of the parties to the action, the  
162 court's own motion, or the motion of a party to the action, the  
163 court may appoint an eldercaring coordinator and refer the  
164 parties to eldercaring coordination to assist in the resolution  
165 of disputes concerning the care and safety of the elder who is  
166 the subject of an action.

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

171 1. The court shall offer each party an opportunity to  
172 consult with an attorney or a domestic violence advocate before  
173 accepting consent to such referral. The court shall determine  
174 whether each party has given his or her consent freely and  
175 voluntarily.

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176        2. The court shall consider whether a party has committed  
177 an act of exploitation as defined in s. 415.102, exploitation of  
178 an elderly person or disabled adult as defined in s. 825.103(1),  
179 or domestic violence as defined in s. 741.28 against another  
180 party or any member of another party's family; engaged in a  
181 pattern of behaviors that exert power and control over another  
182 party and that may compromise another party's ability to  
183 negotiate a fair result; or engaged in behavior that leads  
184 another party to have reasonable cause to believe that he or she  
185 is in imminent danger of becoming a victim of domestic violence.  
186 The court shall consider and evaluate all relevant factors,  
187 including, but not limited to, the factors specified in s.  
188 741.30(6)(b).

189        3. If a party has a history of domestic violence or  
190 exploitation of an elderly person, the court must order  
191 safeguards to protect the safety of the participants and the  
192 elder and the elder's property, including, but not limited to,  
193 adherence to all provisions of an injunction for protection or  
194 conditions of bail, probation, or a sentence arising from  
195 criminal proceedings.

196        (4) COURT APPOINTMENT.—A court appointment of an  
197 eldercaring coordinator is for a term of up to 2 years and the  
198 court shall conduct review hearings intermittently to determine  
199 whether the term should be concluded or extended. Appointments  
200 conclude upon expiration of the term or upon discharge by the



201 court, whichever occurs earlier.

202 (5) QUALIFICATIONS FOR ELDERCARE COORDINATORS.—

203 (a) The court shall appoint qualified eldercaring

204 coordinators who:

205 1. Meet one of the following professional requirements:

206 a. Are licensed as a mental health professional under

207 chapter 491 and hold at least a master's degree in the

208 professional field of practice;

209 b. Are licensed as a psychologist under chapter 490;

210 c. Are licensed as a physician under chapter 458;

211 d. Are licensed as a nurse under chapter 464 and hold at

212 least a master's degree;

213 e. Are certified by the Florida Supreme Court as a family

214 mediator and hold at least a master's degree;

215 f. Are a member in good standing of The Florida Bar; or

216 g. Are a professional guardian as defined in s. 744.102

217 and hold at least a master's degree.

218 2. Have completed all of the following:

219 a. Three years of post-licensure or post-certification

220 practice;

221 b. A family mediation training program certified by the

222 Florida Supreme Court;

223 c. An elder mediation training program that meets

224 standards approved and adopted by the Florida Supreme Court. If

225 the Florida Supreme Court has not yet adopted such standards,

226 the standards for elder mediation training approved and adopted  
 227 by the Association for Conflict Resolution apply; and

228 d. Eldercaring coordinator training. The training must  
 229 total at least 28 hours of training in eldercaring coordination  
 230 topics, including:

231 (I) Elder, guardianship, and incapacity law and procedures  
 232 and less restrictive alternatives to guardianship as it pertains  
 233 to eldercaring coordination.

234 (II) At least 4 hours on the implications of elder abuse,  
 235 neglect, and exploitation and other safety issues in eldercaring  
 236 coordination.

237 (III) The elder's role within eldercaring coordination and  
 238 family dynamics related to eldercaring coordination.

239 (IV) Eldercaring coordination skills and techniques.

240 (V) Multicultural competence and its use in eldercaring  
 241 coordination.

242 (VI) At least 2 hours of ethical considerations pertaining  
 243 to eldercaring coordination.

244 (VII) Use of technology within eldercaring coordination.

245 (VIII) Court-specific eldercaring coordination procedures.

246 3. Have successfully passed a Level 2 background screening  
 247 as provided in s. 435.04(2) and (3) or are exempt from  
 248 disqualification under s. 435.07.

249 4. Have not been a respondent in a final order granting an  
 250 injunction for protection against domestic, dating, sexual, or

251 repeat violence or stalking or exploitation of an elder or a  
252 disabled person.

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

255 (b) A qualified eldercaring coordinator must be in good  
256 standing or in clear and active status with all professional  
257 licensing authorities or certification boards.

258 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING  
259 COORDINATORS.—

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

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

268 (c) Upon the court's own motion or upon a party's motion,  
269 the court may suspend the authority of an eldercaring  
270 coordinator pending a hearing on the motion for removal. Notice  
271 of hearing on removal must be timely served on the eldercaring  
272 coordinator and all parties.

273 (d) If a motion was made in bad faith, a court may, in  
274 addition to any other remedy authorized by law, award reasonable  
275 attorney fees and costs to a party or an eldercaring coordinator

276 who successfully challenges a motion for removal.

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

284 (8) FEES AND COSTS.—The court may not order the parties to  
285 eldercaring coordination without their consent unless the court  
286 determines that the parties have the financial ability to pay  
287 the eldercaring coordination fees and costs. The court shall  
288 determine the allocation among the parties of fees and costs for  
289 eldercaring coordination and may make an unequal allocation  
290 based on the financial circumstances of each party, including  
291 the elder.

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

301 hardship.

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

314 (9) CONFIDENTIALITY.—

315 (a) Except as otherwise provided in this section, all  
316 communications made by, between, or among the parties,  
317 participants, and eldercaring coordinator during eldercaring  
318 coordination shall be kept confidential.

319 (b) The eldercaring coordinator, participants, and each  
320 party designated in the order appointing the eldercaring  
321 coordinator may not testify or otherwise offer evidence about  
322 communications made by, between, or among the parties,  
323 participants, and eldercaring coordinator during eldercaring  
324 coordination, unless one of the following applies:

325 1. Such communications are necessary to identify,

326 authenticate, confirm, or deny a written and signed agreement  
327 entered into by the parties during eldercaring coordination;

328 2. Such communications are necessary to identify an issue  
329 for resolution by the court without otherwise disclosing  
330 communications made by any party or the eldercaring coordinator;

331 3. Such communications are limited to the subject of a  
332 party's compliance with the order of referral to eldercaring  
333 coordination, orders for psychological evaluation, court orders  
334 or health care provider recommendations for counseling, or court  
335 orders for substance abuse testing or treatment;

336 4. The communications are necessary to determine the  
337 qualifications of an eldercaring coordinator or to determine the  
338 immunity and liability of an eldercaring coordinator who has  
339 acted in bad faith or with malicious purpose or in a manner  
340 exhibiting wanton and willful disregard for the rights, safety,  
341 or property of the parties pursuant to subsection (11);

342 5. The parties agree that the communications be disclosed;

343 6. The communications are necessary to protect any person  
344 from future acts that would constitute domestic violence under  
345 chapter 741; child abuse, neglect, or abandonment under chapter  
346 39; or abuse, neglect, or exploitation of an elderly or disabled  
347 adult under chapter 415 or chapter 825, or are necessary in an  
348 investigation conducted under s. 744.2004 or a review conducted  
349 under s. 744.368(5);

350 7. The communications are offered to report, prove, or

351 disprove professional misconduct alleged to have occurred during  
352 eldercaring coordination, solely for the internal use of the  
353 body conducting the investigation of such misconduct;

354 8. The communications are offered to report, prove, or  
355 disprove professional malpractice alleged to have occurred  
356 during eldercaring coordination, solely for the professional  
357 malpractice proceeding; or

358 9. The communications were willfully used to plan a crime,  
359 commit or attempt to commit a crime, conceal ongoing criminal  
360 activity, or threaten violence.

361 (c) Notwithstanding paragraphs (a) and (b),  
362 confidentiality or privilege does not attach to a signed written  
363 agreement reached during eldercaring coordination, unless the  
364 parties agree otherwise, or to any eldercaring coordination  
365 communication:

366 1. For which the confidentiality or privilege against  
367 disclosure has been waived by all parties;

368 2. That is willfully used to plan a crime, commit or  
369 attempt to commit a crime, conceal ongoing criminal activity, or  
370 threaten violence; or

371 3. That requires a mandatory report pursuant to chapter 39  
372 or chapter 415 solely for the purpose of making the mandatory  
373 report to the entity requiring the report.

374 (10) EMERGENCY REPORTING TO THE COURT.—

375 (a) An eldercaring coordinator must immediately inform the

376 | court by affidavit or verified report, without notice to the  
 377 | parties, if:

378 | 1. The eldercaring coordinator has made or will be making  
 379 | a report pursuant to chapter 39 or chapter 415; or

380 | 2. A party, including someone acting on a party's behalf,  
 381 | is threatening or is believed to be planning to commit the  
 382 | offense of kidnapping, as defined in s. 787.01(1), upon an  
 383 | elder, or wrongfully removes or is removing the elder from the  
 384 | jurisdiction of the court without prior court approval or  
 385 | compliance with the requirements of s. 744.1098. If the  
 386 | eldercaring coordinator suspects that a party or family member  
 387 | has relocated an elder within this state to protect the elder  
 388 | from a domestic violence situation, the eldercaring coordinator  
 389 | may not disclose the location of the elder unless required by  
 390 | court order.

391 | (b) An eldercaring coordinator shall immediately inform  
 392 | the court by affidavit or verified report and serve a copy of  
 393 | such affidavit or report on each party upon learning that a  
 394 | party is the subject of a final order or injunction of  
 395 | protection against domestic violence or exploitation of an  
 396 | elderly person or has been arrested for an act of domestic  
 397 | violence or exploitation of an elderly person.

398 | (11) IMMUNITY FROM AND LIMITATION ON LIABILITY.—

399 | (a) A person who is appointed or employed to assist the  
 400 | body designated to perform duties relating to disciplinary



401 proceedings involving eldercaring coordinators has absolute  
402 immunity from liability arising from the performance of his or  
403 her duties while acting within the scope of his or her appointed  
404 functions or duties of employment.

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

411 (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme  
412 Court shall establish minimum standards and procedures for the  
413 qualification, ethical conduct, discipline, and training and  
414 education of eldercaring coordinators who serve under this  
415 section. The Florida Supreme Court may appoint or employ such  
416 personnel as are necessary to assist the court in exercising its  
417 powers and performing its duties under this section.

418 Section 2. This act shall take effect July 1, 2021.