

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; requiring prospective
16 eldercaring coordinators to meet certain
17 qualifications for background screening, unless
18 otherwise exempt; requiring prospective eldercaring
19 coordinators to submit fingerprints for purposes of
20 criminal history background screening; requiring
21 prospective eldercaring coordinators to pay the fees
22 for state and federal fingerprint processing;
23 providing for the disqualification and removal of
24 certain eldercaring coordinators; requiring that
25 notice of hearing on removal of an eldercaring

26 coordinator be timely served; authorizing the courts
 27 to award reasonable attorney fees and costs under
 28 certain circumstances; requiring the court to appoint
 29 successor eldercaring coordinators under certain
 30 circumstances; specifying the courts' authority to
 31 make certain determinations based on the parties'
 32 ability to pay the eldercaring coordination fees and
 33 costs; providing that certain communications between
 34 the parties, participants, and eldercaring
 35 coordinators are confidential; providing exceptions;
 36 providing requirements for emergency reporting to
 37 courts under certain circumstances; providing immunity
 38 from liability for eldercaring coordinators under
 39 specified circumstances; requiring the Florida Supreme
 40 Court to establish certain minimum standards and
 41 procedures for eldercaring coordinators; authorizing
 42 the Florida Supreme Court to appoint or employ
 43 personnel for specified purposes; providing an
 44 effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Section 44.407, Florida Statutes, is created to
 49 read:

50 44.407 Elder-focused dispute resolution process.-

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

52 (a) Denying an elder a voice in decisions regarding
53 himself or herself may negatively affect the elder's health and
54 well-being, as well as deprive the elder of his or her legal
55 rights. Even if an elder is losing capacity to make major
56 decisions for himself or herself, the elder is still entitled to
57 the dignity of having his or her voice heard.

58 (b) As an alternative to proceedings in court, it is in
59 the best interest of an elder, his or her family members, and
60 legally recognized decisionmakers to have access to a
61 nonadversarial process to resolve disputes relating to the elder
62 which focuses on the elder's wants, needs, and best interests.
63 Such a process will protect and preserve the elder's exercisable
64 rights.

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

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

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

79 1. Determine if someone is or is not incapacitated
 80 pursuant to s. 744.331.

81 2. Appoint or remove a guardian.

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

83 4. Audit an annual guardianship report.

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

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

86 7. Enter an injunction to protect an elder under s.
 87 825.1035.

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

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

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

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

101 (c) "Eldercaring coordination" means an elder-focused
102 dispute resolution process during which an eldercaring
103 coordinator assists an elder, legally authorized decisionmakers,
104 and others who participate by court order or by invitation of
105 the eldercaring coordinator in resolving disputes regarding the
106 care and safety of an elder by:

107 1. Facilitating more effective communication and
108 negotiation and the development of problem-solving skills.

109 2. Providing education about eldercare resources.

110 3. Facilitating the creation, modification, or
111 implementation of an eldercaring plan and reassessing it as
112 necessary to reach a resolution of ongoing disputes concerning
113 the care and safety of the elder.

114 4. Making recommendations for the resolution of disputes
115 concerning the care and safety of the elder.

116 5. With the prior approval of the parties to an action or
117 of the court, making limited decisions within the scope of the
118 court's order of referral.

119 (d) "Eldercaring coordination communication" means an oral
120 or a written statement or nonverbal conduct intended to make an
121 assertion by or to an eldercaring coordinator or individuals
122 involved in eldercaring coordination made during an eldercaring
123 coordination activity, or before the activity if made in
124 furtherance of eldercaring coordination. The term does not
125 include statements made during eldercaring coordination which

126 involve the commission of a crime, the intent to commit a crime,
127 or ongoing abuse, exploitation, or neglect of a child or a
128 vulnerable adult.

129 (e) "Eldercaring coordinator" means an impartial third
130 person who is appointed by the court or designated by the
131 parties and who meets the requirements of subsection (5). The
132 role of the eldercaring coordinator is to assist parties through
133 eldercaring coordination in a manner that respects the elder's
134 need for autonomy and safety.

135 (f) "Eldercaring plan" means a continually reassessed plan
136 for the items, tasks, or responsibilities needed to provide for
137 the care and safety of an elder which is modified throughout
138 eldercaring coordination to meet the changing needs of the elder
139 and which takes into consideration the preferences and wishes of
140 the elder. The plan is not a legally enforceable document, but
141 is meant for use by the parties and participants.

142 (g) "Good cause" means a finding that the eldercaring
143 coordinator:

144 1. Is not fulfilling the duties and obligations of the
145 position;

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

148 3. Has conflicting or adverse interests that affect his or
149 her impartiality;

150 4. Has engaged in circumstances that compromise the

151 integrity of eldercaring coordination; or

152 5. Has had a disqualifying event occur.

153

154 The term does not include a party's disagreement with the

155 eldercaring coordinator's methods or procedures.

156 (h) "Legally authorized decisionmaker" means an individual

157 designated, either by the elder or by the court, pursuant to

158 chapter 709, chapter 744, chapter 747, or chapter 765 who has

159 the authority to make specific decisions on behalf of the elder

160 who is the subject of an action.

161 (i) "Participant" means an individual who joins

162 eldercaring coordination by invitation of or with the consent of

163 the eldercaring coordinator but who has not filed a pleading in

164 the action from which the case was referred to eldercaring

165 coordination.

166 (j) "Party" includes the elder who is the subject of an

167 action and any other individual over whom the court has

168 jurisdiction.

169 (3) REFERRAL.—

170 (a) Upon agreement of the parties to the action, the

171 court's own motion, or the motion of a party to the action, the

172 court may appoint an eldercaring coordinator and refer the

173 parties to eldercaring coordination to assist in the resolution

174 of disputes concerning the care and safety of the elder who is

175 the subject of an action.

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

180 1. The court shall offer each party an opportunity to
181 consult with an attorney or a domestic violence advocate before
182 accepting consent to such referral. The court shall determine
183 whether each party has given his or her consent freely and
184 voluntarily.

185 2. The court shall consider whether a party has committed
186 an act of exploitation as defined in s. 415.102, exploitation of
187 an elderly person or disabled adult as defined in s. 825.103(1),
188 or domestic violence as defined in s. 741.28 against another
189 party or any member of another party's family; engaged in a
190 pattern of behaviors that exert power and control over another
191 party and that may compromise another party's ability to
192 negotiate a fair result; or engaged in behavior that leads
193 another party to have reasonable cause to believe that he or she
194 is in imminent danger of becoming a victim of domestic violence.
195 The court shall consider and evaluate all relevant factors,
196 including, but not limited to, the factors specified in s.
197 741.30 (6) (b) .

198 3. If a party has a history of domestic violence or
199 exploitation of an elderly person, the court must order
200 safeguards to protect the safety of the participants and the

201 elder and the elder's property, including, but not limited to,
 202 adherence to all provisions of an injunction for protection or
 203 conditions of bail, probation, or a sentence arising from
 204 criminal proceedings.

205 (4) COURT APPOINTMENT.—A court appointment of an
 206 eldercaring coordinator is for a term of up to 2 years and the
 207 court shall conduct review hearings intermittently to determine
 208 whether the term should be concluded or extended. Appointments
 209 conclude upon expiration of the term or upon discharge by the
 210 court, whichever occurs earlier.

211 (5) QUALIFICATIONS FOR ELDERCARE COORDINATORS.—

212 (a) The court shall appoint qualified eldercaring
 213 coordinators who:

214 1. Meet one of the following professional requirements:

215 a. Are licensed as a mental health professional under
 216 chapter 491 and hold at least a master's degree in the
 217 professional field of practice;

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

219 c. Are licensed as a physician under chapter 458 or
 220 chapter 459;

221 d. Are licensed as a nurse under chapter 464 and hold at
 222 least a master's degree;

223 e. Are certified by the Florida Supreme Court as a family
 224 mediator and hold at least a master's degree;

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

226 g. Are a professional guardian as defined in s.
 227 744.102(17) and hold at least a master's degree.
 228 2. Have completed all of the following:
 229 a. Three years of post-licensure or post-certification
 230 practice;
 231 b. A family mediation training program certified by the
 232 Florida Supreme Court;
 233 c. An elder mediation training program that meets
 234 standards approved and adopted by the Florida Supreme Court. If
 235 the Florida Supreme Court has not yet adopted such standards,
 236 the standards for elder mediation training approved and adopted
 237 by the Association for Conflict Resolution apply; and
 238 d. Eldercaring coordinator training. The training must
 239 total at least 28 hours and must include eldercaring
 240 coordination; elder, guardianship, and incapacity law and
 241 procedures and less restrictive alternatives to guardianship as
 242 it pertains to eldercaring coordination; at least 4 hours on the
 243 implications of elder abuse, neglect, and exploitation and other
 244 safety issues in eldercaring coordination; the elder's role
 245 within eldercaring coordination; family dynamics related to
 246 eldercaring coordination; eldercaring coordination skills and
 247 techniques; multicultural competence and its use in eldercaring
 248 coordination; at least 2 hours of ethical considerations
 249 pertaining to eldercaring coordination; use of technology within
 250 eldercaring coordination; and court-specific eldercaring

251 coordination procedures.

252 3. Have successfully passed a Level 2 background screening
253 as provided in s. 435.04(2) and (3) or are exempt from
254 disqualification under s. 435.07. The prospective eldercaring
255 coordinator must submit a full set of fingerprints to the court
256 or to a vendor, entity, or agency authorized by s. 943.053(13).
257 The court, vendor, entity, or agency shall forward the
258 fingerprints to the Department of Law Enforcement for state
259 processing and the Department of Law Enforcement shall forward
260 the fingerprints to the Federal Bureau of Investigation for
261 national processing. The prospective eldercaring coordinator
262 shall pay the fees for state and federal fingerprint processing.
263 The state cost for fingerprint processing shall be as provided
264 in s. 943.053(3)(e) for records provided to persons or entities
265 other than those specified as exceptions therein.

266 4. Have not been a respondent in a final order granting an
267 injunction for protection against domestic, dating, sexual, or
268 repeat violence or stalking or exploitation of an elder or a
269 disabled person.

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

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

275 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING

276 COORDINATORS.—

277 (a) An eldercaring coordinator must resign and immediately
278 report to the court if he or she no longer meets the minimum
279 qualifications or if any of the disqualifying circumstances
280 occurs.

281 (b) The court shall remove an eldercaring coordinator upon
282 the eldercaring coordinator's resignation or disqualification or
283 upon a finding of good cause shown based on the court's own
284 motion or a party's motion.

285 (c) Upon the court's own motion or upon a party's motion,
286 the court may suspend the authority of an eldercaring
287 coordinator pending a hearing on the motion for removal. Notice
288 of hearing on removal must be timely served on the eldercaring
289 coordinator and all parties.

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

294 (7) SUCCESSOR ELDERCARING COORDINATORS.—If an eldercaring
295 coordinator resigns, is removed, or is suspended from an
296 appointment, the court shall appoint a successor qualified
297 eldercaring coordinator who is agreed to by all parties or, if
298 the parties do not reach agreement on a successor, another
299 qualified eldercaring coordinator to serve for the remainder of
300 the original term.

301 (8) FEES AND COSTS.—The court may not order the parties to
302 eldercaring coordination without their consent unless the court
303 determines that the parties have the financial ability to pay
304 the eldercaring coordination fees and costs. The court shall
305 determine the allocation among the parties of fees and costs for
306 eldercaring coordination and may make an unequal allocation
307 based on the financial circumstances of each party, including
308 the elder.

309 (a) A party who is asserting that he or she is unable to
310 pay the eldercaring coordination fees and costs must complete a
311 financial affidavit form approved by the presiding court. The
312 court shall consider the party's financial circumstances,
313 including income; assets; liabilities; financial obligations;
314 and resources, including, but not limited to, whether the party
315 can receive or is receiving trust benefits, whether the party is
316 represented by and paying a lawyer, and whether paying the fees
317 and costs of eldercaring coordination would create a substantial
318 hardship.

319 (b) If a court finds that a party is indigent based upon
320 the criteria prescribed in s. 57.082, the court may not order
321 the party to eldercaring coordination unless funds are available
322 to pay the indigent party's allocated portion of the eldercaring
323 coordination fees and costs, which may include funds provided
324 for that purpose by one or more nonindigent parties who consent
325 to paying such fees and costs, or unless insurance coverage or

326 reduced or pro bono services are available to pay all or a
 327 portion of such fees and costs. If financial assistance, such as
 328 health insurance or eldercaring coordination grants, is
 329 available, such assistance must be taken into consideration by
 330 the court in determining the financial abilities of the parties.

331 (9) CONFIDENTIALITY.—

332 (a) Except as otherwise provided in this section, all
 333 communications made by, between, or among the parties,
 334 participants, and eldercaring coordinator during eldercaring
 335 coordination shall be kept confidential.

336 (b) The eldercaring coordinator, participants, and each
 337 party designated in the order appointing the eldercaring
 338 coordinator may not testify or otherwise offer evidence about
 339 communications made by, between, or among the parties,
 340 participants, and eldercaring coordinator during eldercaring
 341 coordination, unless one of the following applies:

342 1. Such communications are necessary to identify,
 343 authenticate, confirm, or deny a written and signed agreement
 344 entered into by the parties during eldercaring coordination;

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

348 3. Such communications are limited to the subject of a
 349 party's compliance with the order of referral to eldercaring
 350 coordination, orders for psychological evaluation, court orders

351 or health care provider recommendations for counseling, or court
352 orders for substance abuse testing or treatment;

353 4. The communications are necessary to determine the
354 qualifications of an eldercaring coordinator or to determine the
355 immunity and liability of an eldercaring coordinator who has
356 acted in bad faith or with malicious purpose or in a manner
357 exhibiting wanton and willful disregard for the rights, safety,
358 or property of the parties pursuant to subsection (11);

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

360 6. The communications are necessary to protect any person
361 from future acts that would constitute domestic violence under
362 chapter 741; child abuse, neglect, or abandonment under chapter
363 39; or abuse, neglect, or exploitation of an elderly or disabled
364 adult under chapter 415 or chapter 825, or are necessary in an
365 investigation conducted under s. 744.2004 or a review conducted
366 under s. 744.368(5);

367 7. The communications are offered to report, prove, or
368 disprove professional misconduct alleged to have occurred during
369 eldercaring coordination, solely for the internal use of the
370 body conducting the investigation of such misconduct;

371 8. The communications are offered to report, prove, or
372 disprove professional malpractice alleged to have occurred
373 during eldercaring coordination, solely for the professional
374 malpractice proceeding; or

375 9. The communications were willfully used to plan a crime,

376 commit or attempt to commit a crime, conceal ongoing criminal
377 activity, or threaten violence.

378 (c) Notwithstanding paragraphs (a) and (b),
379 confidentiality or privilege does not attach to a signed written
380 agreement reached during eldercaring coordination, unless the
381 parties agree otherwise, or to any eldercaring coordination
382 communication:

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

385 2. That is willfully used to plan a crime, commit or
386 attempt to commit a crime, conceal ongoing criminal activity, or
387 threaten violence; or

388 3. That requires a mandatory report pursuant to chapter 39
389 or chapter 415 solely for the purpose of making the mandatory
390 report to the entity requiring the report.

391 (10) EMERGENCY REPORTING TO THE COURT.—

392 (a) An eldercaring coordinator must immediately inform the
393 court by affidavit or verified report, without notice to the
394 parties, if:

395 1. The eldercaring coordinator has made or will be making
396 a report pursuant to chapter 39 or chapter 415; or

397 2. A party, including someone acting on a party's behalf,
398 is threatening or is believed to be planning to commit the
399 offense of kidnapping, as defined in s. 787.01(1), upon an
400 elder, or wrongfully removes or is removing the elder from the

401 jurisdiction of the court without prior court approval or
402 compliance with the requirements of s. 744.1098. If the
403 eldercaring coordinator suspects that a party or family member
404 has relocated an elder within this state to protect the elder
405 from a domestic violence situation, the eldercaring coordinator
406 may not disclose the location of the elder unless required by
407 court order.

408 (b) An eldercaring coordinator shall immediately inform
409 the court by affidavit or verified report and serve a copy of
410 such affidavit or report on each party upon learning that a
411 party is the subject of a final order or injunction of
412 protection against domestic violence or exploitation of an
413 elderly person or has been arrested for an act of domestic
414 violence or exploitation of an elderly person.

415 (11) IMMUNITY FROM AND LIMITATION ON LIABILITY.—

416 (a) A person who is appointed or employed to assist the
417 body designated to perform duties relating to disciplinary
418 proceedings involving eldercaring coordinators has absolute
419 immunity from liability arising from the performance of his or
420 her duties while acting within the scope of his or her appointed
421 functions or duties of employment.

422 (b) An eldercaring coordinator who is appointed by the
423 court is not liable for civil damages for any act or omission
424 within the scope of his or her duties under an order of referral
425 unless such person acted in bad faith or with malicious purpose

426 | or in a manner exhibiting wanton and willful disregard for the
427 | rights, safety, or property of the parties.

428 | (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme
429 | Court shall establish minimum standards and procedures for the
430 | qualification, ethical conduct, discipline, and training and
431 | education of eldercaring coordinators who serve under this
432 | section. The Florida Supreme Court may appoint or employ such
433 | personnel as are necessary to assist the court in exercising its
434 | powers and performing its duties under this section.

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