

By Senator Garcia

36-01294D-23

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1                                   A bill to be entitled  
2       An act relating to the Department of Elderly Affairs;  
3       amending s. 400.0069, F.S.; revising the list of  
4       individuals who may not be appointed as ombudsmen  
5       under the State Long-Term Care Ombudsman Program;  
6       amending s. 430.0402, F.S.; revising the definition of  
7       the term "direct service provider"; deleting an  
8       exemption from level 2 background screening  
9       requirements for certain individuals; deleting  
10      obsolete language; amending s. 744.2001, F.S.;  
11      deleting obsolete language; providing additional  
12      duties for the executive director of the Office of  
13      Public and Professional Guardians; amending s.  
14      744.2003, F.S.; revising continuing education  
15      requirements for professional guardians; amending s.  
16      744.2004, F.S.; requiring the office to notify  
17      complainants within a specified timeframe after  
18      determining that a complaint against a professional  
19      guardian is not legally sufficient; reducing the  
20      timeframe within which the office must complete and  
21      provide its initial investigative findings and  
22      recommendations, if any, to the professional guardian  
23      who is the subject of the investigation and to the  
24      complainant; requiring the office to provide a certain  
25      written statement to the complainant and the  
26      professional guardian within a specified timeframe  
27      after completing an investigation; deleting obsolete  
28      language; amending s. 744.3145, F.S.; providing an  
29      additional method of complying with certain

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30 instruction and education requirements for court-  
 31 appointed guardians; amending s. 744.368, F.S.;  
 32 requiring clerks of the court to report to the office  
 33 within a specified timeframe after the court imposes  
 34 any sanctions on a professional guardian; providing an  
 35 effective date.

36

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

38

39 Section 1. Paragraph (b) of subsection (4) of section  
 40 400.0069, Florida Statutes, is amended to read:

41 400.0069 Long-term care ombudsman districts; local long-  
 42 term care ombudsman councils; duties; appointment.—

43 (4) Each district and local council shall be composed of  
 44 ombudsmen whose primary residences are located within the  
 45 boundaries of the district.

46 (b) The following individuals may not be appointed as  
 47 ombudsmen:

48 1. The owner or representative of a long-term care  
 49 facility.

50 2. A provider or representative of a provider of long-term  
 51 care service.

52 3. An employee of the agency.

53 4. An employee of the department who is not employed in the  
 54 State Long-Term Care Ombudsman Program, ~~except for staff~~  
 55 ~~certified as ombudsmen in the district offices.~~

56 5. An employee of the Department of Children and Families.

57 6. An employee of the Agency for Persons with Disabilities.

58 Section 2. Paragraph (b) of subsection (1), paragraphs (a)

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59 and (c) of subsection (2), and subsection (3) of section  
60 430.0402, Florida Statutes, are amended to read:

61 430.0402 Screening of direct service providers.-

62 (1)

63 (b) For purposes of this section, the term "direct service  
64 provider" means a person 18 years of age or older who, pursuant  
65 to a program to provide services to the elderly, has direct,  
66 face-to-face contact with a client while providing services to  
67 the client and has access to the client's living areas, funds,  
68 personal property, or personal identification information as  
69 defined in s. 817.568. The term also includes, but is not  
70 limited to, the administrator or a similarly titled person who  
71 is responsible for the day-to-day operations of the provider,  
72 the financial officer or similarly titled person who is  
73 responsible for the financial operations of the provider,  
74 coordinators, managers, and supervisors of residential  
75 facilities, ~~and~~ volunteers, and any other person seeking  
76 employment with a provider who is expected to, or whose  
77 responsibilities may require him or her to, provide personal  
78 care or services directly to clients or have access to client  
79 funds, financial matters, legal matters, personal property, or  
80 living areas.

81 (2) Level 2 background screening pursuant to chapter 435  
82 and this section is not required for the following direct  
83 service providers:

84 (a) ~~1.~~ Licensed physicians, nurses, or other professionals  
85 licensed by the Department of Health who have been fingerprinted  
86 and undergone background screening as part of their licensure ~~+~~  
87 ~~and~~

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88 ~~2. Attorneys in good standing with The Florida Bar;~~

89  
90 if they are providing a service that is within the scope of  
91 their licensed practice.

92 (c) Volunteers who assist on an intermittent basis for less  
93 than 20 hours per month and who are not listed on the Department  
94 of Law Enforcement Career Offender Search or the Dru Sjodin  
95 National Sex Offender Public Website.

96 1. The program that provides services to the elderly is  
97 responsible for verifying that the volunteer is not listed on  
98 either database.

99 ~~2. Once the department is participating as a specified~~  
100 ~~agency in the clearinghouse created under s. 435.12,~~ The  
101 provider shall forward the volunteer information to the  
102 Department of Elderly Affairs if the volunteer is not listed in  
103 either database specified in subparagraph 1. The department must  
104 then perform a check of the clearinghouse. If a disqualification  
105 is identified in the clearinghouse, the volunteer must undergo  
106 level 2 background screening pursuant to chapter 435 and this  
107 section.

108 ~~(3) Until the department is participating as a specified~~  
109 ~~agency in the clearinghouse created under s. 435.12,~~ the  
110 ~~department may not require additional level 2 screening if the~~  
111 ~~individual is qualified for licensure or employment by the~~  
112 ~~Agency for Health Care Administration pursuant to the agency's~~  
113 ~~background screening standards under s. 408.809 and the~~  
114 ~~individual is providing a service that is within the scope of~~  
115 ~~his or her licensed practice or employment.~~

116 Section 3. Subsections (2) and (3) of section 744.2001,

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117 Florida Statutes, are amended to read:

118       744.2001 Office of Public and Professional Guardians.—There  
119 is created the Office of Public and Professional Guardians  
120 within the Department of Elderly Affairs.

121       (2) The executive director shall, within available  
122 resources:

123       (a) Have oversight responsibilities for all public and  
124 professional guardians.

125       (b) Establish standards of practice for public and  
126 professional guardians by rule, in consultation with  
127 professional guardianship associations and other interested  
128 stakeholders, ~~no later than October 1, 2016. The executive~~  
129 ~~director shall provide a draft of the standards to the Governor,~~  
130 ~~the Legislature, and the secretary for review by August 1, 2016.~~

131       (c) Review and approve the standards and criteria for the  
132 education, registration, and certification of public and  
133 professional guardians in Florida.

134       (d) Offer and make available online an education course to  
135 satisfy the requirements of s. 744.3145(2).

136       (e) Produce and make available information about  
137 alternatives to and types of guardianship for dissemination by  
138 area agencies on aging as defined in s. 430.203 and aging  
139 resource centers as described in s. 430.2053.

140       (3) The executive director's oversight responsibilities of  
141 professional guardians ~~must be finalized by October 1, 2016, and~~  
142 ~~shall~~ include, but are not limited to:

143       (a) Developing and implementing a monitoring tool to ensure  
144 compliance of professional guardians with the standards of  
145 practice established by the Office of Public and Professional

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146 Guardians. This monitoring tool may not include a financial  
147 audit as required by the clerk of the circuit court under s.  
148 744.368.

149 (b) Developing procedures, in consultation with  
150 professional guardianship associations and other interested  
151 stakeholders, for the review of an allegation that a  
152 professional guardian has violated the standards of practice  
153 established by the Office of Public and Professional Guardians  
154 governing the conduct of professional guardians.

155 (c) Establishing disciplinary proceedings, conducting  
156 hearings, and taking administrative action pursuant to chapter  
157 120.

158 Section 4. Subsection (3) of section 744.2003, Florida  
159 Statutes, is amended to read:

160 744.2003 Regulation of professional guardians; application;  
161 bond required; educational requirements.—

162 (3) Each professional guardian as defined in s. 744.102(17)  
163 and public guardian must receive a minimum of 40 hours of  
164 instruction and training. Each professional guardian must  
165 receive a minimum of 30 ~~16~~ hours of continuing education every 2  
166 calendar years after the year in which the initial 40-hour  
167 educational requirement is met. The required continuing  
168 education must include at least 2 hours on fiduciary  
169 responsibilities; 2 hours on professional ethics; 1 hour on  
170 advance directives; 3 hours on abuse, neglect, and exploitation;  
171 and 4 hours on guardianship law. The instruction and education  
172 must be completed through a course approved or offered by the  
173 Office of Public and Professional Guardians. The expenses  
174 incurred to satisfy the educational requirements prescribed in

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175 this section may not be paid with the assets of any ward. This  
176 subsection does not apply to any attorney ~~who is~~ licensed to  
177 practice law in this state or an institution acting as guardian  
178 under s. 744.2002(7).

179 Section 5. Subsections (1) and (6) of section 744.2004,  
180 Florida Statutes, are amended to read:

181 744.2004 Complaints; disciplinary proceedings; penalties;  
182 enforcement.—

183 (1) ~~By October 1, 2016,~~ The Office of Public and  
184 Professional Guardians shall establish procedures to:

185 (a) Review and, if determined legally sufficient, initiate  
186 an investigation within 10 business days after receipt of  
187 ~~investigate~~ any complaint that a professional guardian has  
188 violated the standards of practice established by the Office of  
189 Public and Professional Guardians governing the conduct of  
190 professional guardians. A complaint is legally sufficient if it  
191 contains ultimate facts that show a violation of a standard of  
192 practice by a professional guardian has occurred.

193 (b) Notify the complainant ~~Initiate an investigation~~ no  
194 later than 10 business days after the Office of Public and  
195 Professional Guardians determines that a complaint is not  
196 legally sufficient ~~receives a complaint~~.

197 (c) Complete and provide initial investigative findings and  
198 recommendations, if any, to the professional guardian and the  
199 person who filed the complaint within 45 ~~60~~ days after receipt  
200 of a complaint.

201 (d) Obtain supporting information or documentation to  
202 determine the legal sufficiency of a complaint.

203 (e) Interview a ward, family member, or interested party to

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204 determine the legal sufficiency of a complaint.

205 (f) Dismiss any complaint if, at any time after legal  
206 sufficiency is determined, it is found there is insufficient  
207 evidence to support the allegations contained in the complaint.

208 (g) Within 10 business days after completing an  
209 investigation, provide to the complainant and the professional  
210 guardian a written statement specifying any finding of a  
211 violation of a standard of practice by the professional guardian  
212 and any actions taken, or specifying that no such violation was  
213 found, as applicable.

214 (h) Coordinate, to the greatest extent possible, with the  
215 clerks of court to avoid duplication of duties with regard to  
216 the financial audits prepared by the clerks pursuant to s.  
217 744.368.

218 (6) ~~By October 1, 2016,~~ The Department of Elderly Affairs  
219 shall adopt rules to implement the provisions of this section.

220 Section 6. Subsection (4) of section 744.3145, Florida  
221 Statutes, is amended to read:

222 744.3145 Guardian education requirements.—

223 (4) Each person appointed by the court to be a guardian  
224 must complete the required number of hours of instruction and  
225 education within 4 months after his or her appointment as  
226 guardian. The instruction and education must be completed  
227 through a course approved by the chief judge of the circuit  
228 court and taught by a court-approved organization or through a  
229 course offered by the Office of Public and Professional  
230 Guardians under s. 744.2001. Court-approved organizations may  
231 include, but are not limited to, community or junior colleges,  
232 guardianship organizations, and the local bar association or The



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233 Florida Bar.

234 Section 7. Subsection (8) is added to section 744.368,  
235 Florida Statutes, to read:

236 744.368 Responsibilities of the clerk of the circuit  
237 court.—

238 (8) Within 10 business days after the court imposes any  
239 sanctions on a professional guardian, including, but not limited  
240 to, contempt of court or removal of the professional guardian,  
241 the clerk shall report such actions to the Office of Public and  
242 Professional Guardians.

243 Section 8. This act shall take effect July 1, 2023.