

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1411 Department of Elderly Affairs
SPONSOR(S): Children, Families & Seniors Subcommittee, Tramont
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	17 Y, 0 N, As CS	Osborne	Brazzell
2) Health & Human Services Committee	18 Y, 0 N	Osborne	Calamas

SUMMARY ANALYSIS

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program (Ombudsman Program) to qualify for OAA funding. In Florida, the Ombudsman Program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, administered by the Department of Elderly Affairs (DOEA). Ombudsmen investigate complaints regarding the welfare and rights of long-term care facility residents and perform annual assessments of long-term care facilities.

Current law specifies that DOEA employees based in Ombudsman Program district offices may be appointed to local councils; however, DOEA employees in the Ombudsman Program state office may not. DOEA interprets this provision as prohibiting Ombudsman Program state office employees from being certified as ombudsmen. CS/HB 1411 allows DOEA employees under the Ombudsman Program to be appointed to a local council, regardless of whether that person is employed in the state or a district office.

Florida requires prospective employees of entities providing DOEA-administered services to certain vulnerable populations undergo a criminal history background check. Direct service providers, meaning personnel of who have face-to-face contact with clients and have access to client living areas, funds, personal property, or personal identification information, must undergo level 2 background screenings. Some employees are exempt from the background screening requirement, including certain medical professionals licensed by the Department of Health (DOH), and attorneys in good standing with the Florida Bar.

CS/HB 1411 expands background screening requirements to include more direct service providers and eliminates the exemptions for licensed health care professionals and attorneys in good standing with the Florida Bar. The bill also deletes obsolete language relating to DOEA background screening processes in place prior to DOEA joining the Care Provider Background Screening Clearinghouse.

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. The Office of Public and Professional Guardians (OPPG) under DOEA is responsible for regulating professional guardians, including establishing practice standards, registration and education requirements, and disciplinary processes.

The bill changes the training and educational requirements for professional guardians and requires OPPG provide materials and training for non-professional guardians. The bill also establishes specific timeframes for processing a complaint about a professional guardian, and requires that the clerk of court report any sanctions imposed by a court on a professional guardian to OPPG within 10 business days.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state create a Long-Term Care Ombudsman Program (Ombudsman Program) to be eligible for funding associated with programs under the OAA.¹ Florida's Ombudsman Program was established in 1975 as a result of the OAA, which grants individuals living in long-term care facilities a special set of resident's rights.² The Ombudsman Program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, assisted living facilities (ALFs), and adult family-care homes.³

The Ombudsman Program is administratively housed in the Department of Elderly Affairs (DOEA) and is headed by the State Long-Term Care Ombudsman (State Ombudsman), who is appointed by the DOEA Secretary.⁴ The State Ombudsman carries out his or her responsibilities through the training and certification of volunteers who operate through district and local councils, and through staff positions in the state and district offices established to coordinate and assist the local councils.⁵

The Ombudsman Program administers a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of long-term care facilities.⁶ The Ombudsman Program investigates complaints relating to actions or omissions by providers or representatives of providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.⁷ In addition to investigating and resolving complaints, ombudsmen conduct annual administrative assessments, which are unannounced visits to assess the quality of care in long-term care facilities.⁸

Most functions of the Ombudsman Program are administered by certified ombudsmen, who are primarily volunteers. Certified ombudsmen must receive at least 20 hours of training addressing, at a minimum, the following subjects: resident confidentiality, guardianships and powers of attorney, medication administration, care and medication of residents with dementia and Alzheimer's disease, accounting for residents' funds, discharge rights and responsibilities, and cultural sensitivity.⁹ Certified ombudsmen must complete 10 hours of continuing education annually.¹⁰

In recent years, the Ombudsman Program has had challenges maintaining the cadre of volunteers necessary to operate the program. During 2020, there was an 18 percent decline in its number of volunteers, and in 2021, the number further declined by 10 percent.¹¹ In 2020-21, the Ombudsman Program was served by 199 volunteers who contributed a total of 25,684 hours.¹² In 2021-2022, the Ombudsman Program conducted 2,815 complaint investigations and worked with 3,978 facilities.¹³

¹ 42 U.S.C. § 3058, *see also* s. 400.0061(1), F.S.

² Florida Ombudsman Program, *About Us: History of the Ombudsman Program*. Available at <https://ombudsman.elderaffairs.org/about-us/> (last visited April 4, 2023).

³ S. 400.0060(6), F.S.

⁴ S. 400.0063, F.S.

⁵ Department of Elderly Affairs, *Agency Analysis for HB 1411: 2023*, p. 2. On file with the Health and Human Services Committee.

⁶ S. 400.0078, F.S.

⁷ S. 400.0073, F.S.

⁸ S. 400.0074, F.S.

⁹ S. 400.0091, F.S.

¹⁰ *Id.*

¹¹ Department of Elder Affairs, *Florida Ombudsman Program Annual Report 2020-21*, p.3. Available at <https://ombudsman.elderaffairs.org/wp-content/uploads/Annual-Report-2020-2021.pdf> (last visited March 18, 2023).

¹² *Id.* at p. 8.

¹³ Department of Elder Affairs, *2022 Live Well & Age Well Department Overview*, p. 29. Available at https://elderaffairs.org/wp-content/uploads/2022-Department-Overview_WEB.pdf (last visited April 5, 2023).

Long-Term Care Ombudsman Districts

The State Ombudsman is responsible for designating long-term care ombudsman districts.¹⁴ Districts may have one or more long-term care ombudsman councils which carry out the duties of the Ombudsman Program within local communities.¹⁵ The State Ombudsman must ensure that there is at least one employee of the department who is a certified ombudsman and at least one local council operating in each district; the State Ombudsman may create additional local councils within districts as necessary to ensure access to Ombudsman Program services.¹⁶

Long-Term Care Ombudsman Program Districts¹⁷



Local councils are composed of certified ombudsmen whose primary residences are within the boundaries of the district.¹⁸ Upon good cause shown, the State Ombudsman may appoint certified ombudsmen who live outside of the district to a local council. Current law directs the State Ombudsman to *strive* to ensure that each local council consists of the following persons:¹⁹

- At least one licensed physician significant geriatric experience;
- At least one registered nurse with geriatric experience;
- At least one licensed pharmacist;
- At least one registered dietitian;
- At least six nursing home residents or representative consumer advocates for nursing home residents;
- At least three residents of assisted living facilities or adult family-care homes or representative consumer advocates of such;
- At least one attorney; and
- At least one professional social worker.

DOEA's current process for appointing an individual to a local council is as follows: a volunteer applies, completes all required forms, and is interviewed by the District Ombudsman Manager (DOM). The volunteer is then screened for potential conflicts of interest, and if no conflicts exist, the volunteer undergoes a level 2 background screening. Upon passing the background screening, the State

¹⁴ S. 400.0069(1), F.S.

¹⁵ S. 400.0060(4) and (5), F.S.

¹⁶ S. 400.0069(1), F.S.

¹⁷ Florida Ombudsman Program, *District Offices*. Available at <https://ombudsman.elderaffairs.org/about-us/district-offices/> (last visited April 5, 2023).

¹⁸ S. 400.0069(4), F.S.

¹⁹ *Id.*

Ombudsman sends an approval letter to the DOM and the volunteer may begin training for certification.²⁰ Due to the time and resources required to train ombudsmen, it is DOEA's standard procedure to appoint a volunteer to a local council and ensure that there is no conflict of interest or criminal background prior to training and certifying a potential ombudsman.

In the context of local councils, current law expressly prohibits the following persons from being appointed as ombudsmen:²¹

- Owners or representatives of a long-term care facility;
- Provider or representatives of a provider of long-term care service;
- Employees of the Agency for Health Care Administration, the Department of Children and Families, or the Agency for Persons with Disabilities; and
- Employees of DOEA, except for staff certified as ombudsmen in the *district* offices.

DOEA has interpreted this provision to permit staff in the Ombudsman Program's district offices to be appointed to local councils, while Ombudsman Program staff in the state office may not, and thus may not provide direct services in local communities.²² Under this premise, DOEA has provided ombudsman training to Ombudsman Program state office employees, but has not officially appointed them to local councils or certified them. Ombudsman Program employees in the state office have, therefore, been unable to provide services to local communities, or gain hands-on experience with the issues facing ombudsman.²³

Federal regulations permit the State Ombudsman to designate employees or volunteers within the Ombudsman Program as "representatives of the office," to carry out the duties of the office, subject to training and certification requirements.²⁴ Consistent with this, under current law, a "Representative of the State Long-Term Care Ombudsman Program" includes the State Ombudsman, an employee of the state or district office certified as an ombudsman, or an individual certified as an ombudsman serving on the state or a local council.²⁵

Background Screening

Current law requires licensed service providers serving specified vulnerable populations to background screen prospective employees.²⁶ Procedures and requirements for criminal history background screening of prospective employees are established in Ch. 435, F.S.

There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,²⁷ and may include criminal records checks through local law enforcement agencies. A level 1 screening may be paid for and conducted by employers through FDLE's website, which provides immediate results.²⁸ A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.²⁹

²⁰ *Supra*, note 5.

²¹ S. 400.0069(4), F.S.

²² *Supra*, note 5.

²³ *Id.*

²⁴ See 45 C.F.R. § 1324.19.

²⁵ S. 400.0060(9), F.S.

²⁶ Ch. 435, F.S.

²⁷ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. Available at www.nsopw.gov (last visited March 15, 2023).

²⁸ Florida Department of Law Enforcement, *State of Florida Criminal History Records Check*. Available at <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited March 15, 2023).

²⁹ S. 435.04, F.S.

Current law requires level 2 background screenings for direct service providers, meaning any person employed by a DOEA-administered program to provide services to the elderly who has direct, face-to-face contact with clients or has access to client living areas, funds, personal property, or personal identification information.³⁰ Current law only expressly includes coordinators, managers, and supervisors of residential facilities and volunteers in the definition of direct service provider.³¹ Certain classes of service providers are exempt from the level 2 background screening requirement, including licensed physicians, nurses and other professionals licensed by the Department of Health (DOH) who have undergone background screening as a part of their licensure, as well as attorneys in good standing with the Florida Bar.³²

Attorneys in good standing with the Florida Bar are screened by the Florida Board of Bar Examiners prior to being admitted to the Florida Bar.³³ However, attorneys are only required to self-report to the Florida Bar if they have been convicted of a crime,³⁴ and the Florida Bar does not have a mechanism for automatic notification for subsequent arrests. As such, an attorney may be in good standing but have an arrest or conviction that has not been reported to the Florida Bar.

Care Provider Background Screening Clearinghouse

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single program for screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among specified agencies.³⁵ Specified agencies include DOEA, DOH, the Agency for Health Care Administration, the Department of Children and Families, the Agency for Persons with Disabilities, and the Department of Education, among other government entities.³⁶ Once a person's screening record is in the Clearinghouse, that person may avoid for any future state screens and related fees.³⁷ Full implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013.³⁸

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is a person who has been appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property, or both.³⁹ Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.⁴⁰ Current law directs the courts to use the least restrictive form of guardianship appropriate to ensure the necessary level of care for a person and to protect that person's rights.⁴¹

A family member or friend may be appointed by the court as a person's guardian; other persons, a bank, or corporation may also act as a guardian.⁴² A guardian who has at any time rendered services to three or more non-relative wards is considered a professional guardian, including public guardians.⁴³

³⁰ S. 430.0402(1), F.S. See also, 817.568(1)(f), F.S., "Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person.

³¹ *Id.*

³² S. 430.0402(2), F.S.

³³ Florida Board of Bar Examiners, *Admission Requirements*. Available at <https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/F8FE824E0EECACE885257C0B00672021> (last visited March 15, 2023).

³⁴ The Florida Bar, *Chapter 3: Rules of Discipline, Rule 3-7.2 Procedures on Criminal or Professional Misconduct; Discipline on Determination or Judgement of Guilt of Criminal Misconduct; Discipline on Removal from Judicial Office*. Available at <https://www-media.floridabar.org/uploads/2022/12/Ch-3-DEC-RRTFB-12-2-2022-3.pdf> (last visited March 15, 2023).

³⁵ Chapter 2012-73, L.O.F.

³⁶ S. 435.02(5), F.S.

³⁷ Agency for Health Care Administration, *Clearinghouse Renewals*. Available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml (last visited March 15, 2023).

³⁸ S. 435.12, F.S.

³⁹ S. 744.102(9), F.S.

⁴⁰ S. 744.1012, F.S.

⁴¹ *Id.*

⁴² S. 744.2007(1), F.S.

⁴³ S. 744.102(17), F.S.

Office of Public and Professional Guardians

In 1999, the Legislature created the “Public Guardianship Act” and established the Statewide Public Guardianship Office (SPGO) within DOEA.⁴⁴ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG) and tasked OPPG with monitoring and regulating professional guardians.⁴⁵ OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve as such.⁴⁶ There are 16 public guardian offices serving Florida’s 67 counties.⁴⁷

The executive director of OPPG is responsible for the oversight of all public and professional guardians.⁴⁸ The executive director’s oversight responsibilities include, but are not limited to:⁴⁹

- Establishing standards of practice for public and professional guardians;
- Reviewing and approving the standards and criteria for the education, registration, and certification of public and professional guardians;
- Developing a guardianship training program curriculum that may be offered to all guardians;
- Developing and implementing a monitoring tool to use for periodic monitoring activities of professional guardians; however, this monitoring tool may not include a financial audit as required to be performed by the clerk of the circuit court under s. 744.368, F.S.;
- Developing procedures for the review of an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians; and
- Establishing disciplinary proceedings, conducting hearings, and taking administrative action under ch. 120, F.S.

OPPG oversight does not extend to non-professional guardians – those guardians serving relatives or fewer than three wards.⁵⁰ OPPG makes resources for non-professional guardians available on their website such as the Florida State Guardianship Association’s (FSGA) website.⁵¹ FSGA provides training courses that qualify toward the eight-hours of training that is required of non-professional guardians within four months of appointment.⁵²

Guardian Registration

Professional guardians are required to register annually with OPPG.⁵³ Since 2016, approximately 550 professional guardians have registered with OPPG statewide.⁵⁴ As part of the registration, the professional guardian must:⁵⁵

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;
- Successfully pass an examination approved by DOEA to demonstrate competency to act as a professional guardian;

⁴⁴ S. 744.701, F.S. (1999).

⁴⁵ Ch. 2016-40, L.O.F.

⁴⁶ *Supra*, note 13 at p. 43.

⁴⁷ *Id.*, at p. 44.

⁴⁸ S. 744.2001(2)(a), F.S.

⁴⁹ S. 744.2001, F.S.

⁵⁰ *Id.*

⁵¹ Department of Elderly Affairs, *Agency Analysis for HB 1411: 2023*, p. 3. On file with the Health and Human Services Committee. See also, Florida State Guardianship Association, *Guardianship Training*. Available at <https://www.floridaguardians.com/education/guardianship-training/> (last visited April 20, 2023).

⁵² S. 744.3145, F.S.

⁵³ S. 744.2002, F.S.

⁵⁴ Department of Elder Affairs, *Office of Public & Professional Guardians (OPPG)*. Available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited April 5, 2023).

⁵⁵ Ss. 744.2002(3), 744.2003, and 744.3135, F.S.

- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.

Under current law, professional guardians must complete a minimum of 16 hours of continuing education every two calendar years.⁵⁶ The continuing education courses must be approved or offered by OPPG, however, there are no specific content requirements under current law.⁵⁷

The executive director of OPPG may deny registration to a professional guardian if it is determined that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of ch. 744, F.S.⁵⁸

Guardian Disciplinary Action

The relationship between the guardian and the ward is a fiduciary one; it may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law.⁵⁹ As such, the guardian must act in the best interest of the ward and carry out his or her responsibilities in an informed and considered manner. Should a guardian breach his or her fiduciary duty to the ward, the court is obligated to intervene to protect the ward and the ward's interests;⁶⁰ however, there currently is no statutory requirement for the courts to report the removal of a guardian to OPPG.

Guardians are also obligated to adhere to the standards of practice established by OPPG;⁶¹ guardians may be disciplined for unethical or illegal actions taken in their role of guardian.⁶² OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the guardian is currently appointed.⁶³

Disciplinary action may be taken by OPPG against a professional guardian for offenses including, but not limited to:⁶⁴

- Making a misleading, deceptive, or fraudulent representation in or related to the practice of guardianship;
- Violating any rule governing guardians or guardianship adopted by OPPG;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to a crime which relates to the practice of, or ability to practice as, a professional guardian;
- Failing to comply with the educational course requirements for professional guardians; and
- Using the position of guardian for financial gain.

When determining what disciplinary action against a professional guardian is appropriate, OPPG must first consider what sanctions are necessary to safeguard the wards and protect the public, prior to considering any mitigation or rehabilitation for the professional guardian.⁶⁵ If OPPG finds that a professional guardian has committed an offense constituting grounds for discipline, OPPG may impose any of the following:⁶⁶

- Refuse to register an applicant as a professional guardian;
- Suspend or revoke a professional guardian's registration;

⁵⁶ S. 744.2003(3), F.S.

⁵⁷ *Id.*

⁵⁸ S. 744.2002, F.S.

⁵⁹ S. 744.446, F.S.

⁶⁰ S. 744.446(5), F.S.

⁶¹ See rule 58M-2.009, F.A.C.

⁶² S. 744.20041, F.S.

⁶³ S. 744.2004(4), F.S.

⁶⁴ S. 744.20041, F.S.

⁶⁵ S. 744.20041(3), F.S.

⁶⁶ S. 744.20041(2), F.S.

- Issue a reprimand;
- Require treatment, completion of continuing education courses, or reexamination;
- Require restitution; or
- Require remedial education.

Complaints & Investigations

Any person may submit a complaint against a professional guardian to OPPG. OPPG is required to investigate allegations of suspected wrongdoing perpetrated by public and professional guardians. Once OPPG receives a complaint, it is required to:⁶⁷

- Review and, if determined legally sufficient,⁶⁸ investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.

On October 1, 2016, in order to comply with their statutory obligation to investigate complaints, OPPG entered into a memorandum of understanding with six Circuit Court Clerks offices across the state, collectively referred to as the Statewide Investigation Alliance (SIA).⁶⁹ In accordance with the memorandum of understanding, the SIA investigates complaints that have been referred by OPPG.⁷⁰ Investigations by OPPG or the SIA which find substantiated allegations of violations by professional guardians may be referred to law enforcement, the Office of the Attorney General, the Office of the State Attorney, or the Florida Bar, as appropriate.

Effect of the Bill

Long-Term Care Ombudsman Program

CS/HB 1411 revises current law to specify that any DOEA employee working in the Ombudsman Program may be appointed to local councils as a certified ombudsman. This will allow the State Ombudsman to appoint Ombudsman Program staff to local councils as necessary so that they may perform duties within local communities, regardless of whether they are based in a district office or the state office. All Ombudsman Program staff, upon appointment and certification, will thus be able to participate directly in all program activities and fill service gaps resulting from the current shortage in volunteer ombudsmen. As the State Ombudsman may, with good cause, appoint ombudsman to councils located in districts in which the ombudsman does not live, it is conceivable that state office staff could be appointed to local councils outside of the district in which they live and work.⁷¹

Background Screening

⁶⁷ S. 744.2004, F.S.

⁶⁸ S. 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

⁶⁹ Florida Clerks, *Statewide Investigation Alliance*. Available at <https://flclerkersia.com/> (last visited April 5, 2023). The six Clerks offices that make up the SIA are Pinellas, Pasco, Palm Beach, Lee, Okaloosa, and Polk counties.

⁷⁰ See, Memorandum of Understanding by and between the Department of Elder Affairs, Office of Public and Professional Guardians, and Clerks (July 14, 2016). Available at <https://flclerkersia.files.wordpress.com/2018/10/doea-clerk-mou-final-executed-7-1-2018.pdf> (last visited April 5, 2023).

⁷¹ S. 400.0069(4), F.S.

CS/HB 1411 expands the definition of direct service providers to include, but not be limited to, employees responsible for the daily and financial operations of the provider and any other person who may provide personal care or services directly to clients, or have access to client funds, financial or legal matters, personal property or living areas.

The bill amends the statute that exempts certain licensed professionals from the background screening requirement. The bill would require that health care professionals licensed under DOH who are providing services outside of the scope of their license undergo background screening. The bill also deletes provisions that exempt attorneys in good standing with the Florida Bar from background screening. This would require all attorneys who are direct service providers to be background screened, regardless of their standing with the Florida Bar.

The bill also deletes language relating to DOEA background screening processes prior to DOEA joining the Clearinghouse. This language is obsolete as DOEA is participating in the Clearinghouse.

Office of Public and Professional Guardians

CS/HB 1411 requires OPPG to provide information relating to alternatives to and types of guardianship to Area Agencies on Aging and Aging Resource Centers for dissemination to the populations they serve. The bill requires the executive director of OPPG to produce an online education course for guardians who are not professional guardians.

The bill also increases the number of continuing education hours required for professional guardians from 16 to 30 hours every two years. The bill specifies that the continuing education must include, at a minimum, the following:

- 2 hours on fiduciary responsibilities;
- 2 hours on professional ethics;
- 1 hour on advance directives;
- 3 hours on abuse, neglect, and exploitation; and
- 4 hours on guardianship law.

The bill revises the process by which OPPG is required to investigate complaints made against a professional guardian and details timelines for providing information to the complainant and the professional guardian who is subject to the complaint. Under the bill, OPPG must review complaints, and if determined to be legally sufficient, initiate investigations within 10 business days of receiving a complaint. The bill also requires OPPG to notify the complainant no later than 10 business days after OPPG determines a complaint is not legally sufficient. The bill shortens the timeframe in which OPPG must complete and provide initial investigative findings and recommendations, if any, to the professional guardian and complainant from 60 to 45 business days. The bill requires that within 10 business days of an investigation being completed, OPPG must provide the complainant and the professional guardian with a written statement of findings.

CS/HB 1411 also requires that the clerk of court notify OPPG of any sanctions imposed on a guardian within 10 business days.

The bill removes obsolete language requiring OPPG to complete certain actions by various dates in 2016.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.0069, F.S., relating to long-term care ombudsman districts; local long-term care ombudsman councils; duties; appointment.
- Section 2:** Amends s. 430.0402, F.S., relating to screening of direct service providers.
- Section 3:** Amends s. 744.2002, F.S., relating to the Office of Public and Professional Guardians.

- Section 4:** Amends s. 744.2003, F.S., relating to regulation of professional guardians; application; bond required; educational requirements.
- Section 5:** Amends s. 744.2004, F.S., relating to complaints; disciplinary proceedings; penalties; enforcement.
- Section 6:** Amends s. 744.3145, F.S., relating to guardian education requirements.
- Section 7:** Amends s. 744.368, F.S., relating to responsibilities of the clerk of the circuit court.
- Section 8:** Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.⁷²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 1411 expands the types of employees who are required to undergo level 2 background screenings as a term of employment. As employers are responsible for paying the costs of background screening,⁷³ there is likely to be an indeterminate, increased cost to private employers who employ direct service providers as defined in the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires rulemaking nor confers or alters an agency's rulemaking authority.

⁷² *Supra*, note 5, p. 4. See also, Department of Elderly Affairs, *Agency Analysis on HB 7025 (2020)*, p. 4. On file with the Health and Human Services Committee.

⁷³ S. 435.08, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment makes changes relating to the Office of Public and Professional Guardians (OPPG) under DOEA. The amendment makes changes to the training and educational requirements for professional guardians and requires that OPPG provide materials and training for non-professional guardians. The amendment also establishes specific timeframes for processing a complaint about a professional guardian, and requires that the clerk of court report any sanctions imposed by a court on a professional guardian to OPPG within 10 business days.

The bill was reported favorably as amended. The analysis is drafted to committee substitute passed by the Children, Families & Seniors Subcommittee.