

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1411 Department of Elderly Affairs
SPONSOR(S): Children, Families & Seniors Subcommittee, Tramont
TIED BILLS: IDEN./SIM. **BILLS:** SB 1396

FINAL HOUSE FLOOR ACTION: 110 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1411 passed the House on April 28, 2023, as SB 1396.

The federal Older Americans Act (OAA) requires each state to have 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 ombudsman 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. The bill allows DOEA employees under the Ombudsman Program to be appointed to a local ombudsman council, regardless of whether that person is employed in the state or a district office.

Florida requires prospective employees of entities providing some DOEA-administered services to undergo a criminal history background check. Direct service providers, meaning personnel 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 and attorneys. The bill 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.

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 regulates professional guardians, including practice standards, registration and education requirements, and discipline.

The bill changes the training and educational requirements for professional guardians and requires OPPG to provide materials and training for non-professional guardians. The bill also establishes timeframes for processing a complaint about a professional guardian, and requires the clerk of court to 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 was approved by the Governor on June 19, 2023, ch. 2023-259, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to 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 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

Ombudsman Certification

Most functions of the Ombudsman Program are administered by certified ombudsmen, who are primarily volunteers. The State Ombudsman must ensure that individuals receive appropriate training prior to being certified as an ombudsman; such training must include at least 20 hours of training addressing, at a minimum, the following subjects:⁹

- 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.

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 May 15, 2023).

³ S. 400.0060(6), F.S.

⁴ S. 400.0063, F.S.

⁵ Department of Elderly Affairs, *Agency Analysis of 2023 HB 1411*, p. 2. On file with the Children, Families, and Seniors Subcommittee.

⁶ S. 400.0078, F.S.

⁷ S. 400.0073, F.S.

⁸ S. 400.0074, F.S.

⁹ S. 400.0091, F.S.

In addition, 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

Ombudsman Districts

Most Ombudsman Program functions are conducted at the local level by local long-term care ombudsman councils (local councils) within regional districts designated by the State Ombudsman.¹⁴ Every district must have at least one local council responsible for carrying 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



Ombudsman Local Councils

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

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 May 15, 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 May 15, 2023).
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 May 15, 2023).
¹⁸ S. 400.0069(4), F.S.

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 dietician;
- 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.

The current process for appointing an individual to a local council begins when a volunteer applies, completes all required forms, and is interviewed by the District Ombudsman Manager. 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 Ombudsman sends an approval letter to the District Ombudsman Manager, 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 disqualifying criminal background prior to training and certifying that volunteer as an ombudsman.

In the context of local councils, current law expressly prohibits several types of people from being appointed as ombudsmen, including nursing home owners, long-term care providers, and employees of the Agency for Health Care Administration, the Department of Children and Families, and the Agency for Persons with Disabilities.²¹

In addition, DOEA employees may not be appointed to local councils, except for *district* office staff who are certified ombudsmen. Because DOEA practice is to only train and certify a person after appointment to a local council, DOEA interprets the statutory ban on appointing state office staff as a ban on *certifying* them as well. Under this premise, DOEA provides ombudsman training to Ombudsman Program state office employees, but does not appoint them to local councils or certify them. As a result, Ombudsman Program employees in the state office have been unable to provide direct services in local communities. According to DOEA, appointing state office staff members to local councils would be beneficial because it would allow program staff to gain hands-on experience with the issues facing ombudsman and would allow the program to fill gaps created by the current shortage of volunteer ombudsmen.²²

Elder Services Background Screening

Current law requires licensed service providers serving specified vulnerable populations to background screen prospective employees.²³ Procedures and requirements for criminal history background screening of prospective employees are established in Ch. 435, F.S.

¹⁹ *Id.*

²⁰ *Supra*, note 5.

²¹ S. 400.0069(4), F.S.

²² *Supra*, note 5.

²³ 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,²⁴ 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.²⁵ 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.²⁶

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 access to client living areas, funds, personal property, or personal identification information *and* has direct, face-to-face contact with clients.²⁷ Current law only expressly includes coordinators, managers, and supervisors of residential facilities and volunteers in the definition of direct service provider.²⁸

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.²⁹

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.³⁰ However, attorneys are only required to self-report to the Florida Bar if they have been convicted of a crime,³¹ and the Florida Bar does not have an automatic notification mechanism 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.³² 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.³³ Once a person's screening record is in the Clearinghouse, that person may avoid for any future state screens and related fees.³⁴

²⁴ 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 May 15, 2023).

²⁵ 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 May 15, 2023).

²⁶ S. 435.04, F.S.

²⁷ S. 430.0402(1), F.S. *See also*, s. 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.

²⁸ *Id.*

²⁹ S. 430.0402(2), F.S.

³⁰ Florida Board of Bar Examiners, *Admission Requirements*. Available at <https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/F8FE824E0EECACE885257C0B00672021> (last visited May 15, 2023).

³¹ 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).

³² Chapter 2012-73, L.O.F.

³³ S. 435.02(5), F.S.

³⁴ Agency for Health Care Administration, *Clearinghouse Renewals*. Available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml (last visited May 15, 2023).

Current law includes phase-in language prohibiting DOEA from requiring a level 2 screening for certain types of prospective personnel until the Clearinghouse was fully implemented. Full implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013.³⁵ The Clearinghouse is fully implemented, and DOEA now requires level 2 screenings for those personnel, thus making the phase-in language obsolete.³⁶

Aging and Disability Resource Centers

The federal Administration on Aging provides grants to states for Aging and Disability Resource Center (ADRC) programs to assist elders and persons with disabilities to provide information about, and streamline access to, public and private long-term services and supports options.³⁷ ADRCs in Florida operate as a single, coordinated system for information and access to services for all Floridians seeking long-term care resources, including adults with severe and persistent mental illnesses.³⁸ ADRCs provide information and assistance about state and federal benefits, as well as available local programs and services.³⁹ Formerly called Aging Resource Centers, the revised term reflects a federal policy to address the resource needs of persons of all ages with disabilities, in addition to elders.

In Florida, ADRC functions are administered through 11 regional Area Agencies on Aging.⁴⁰

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a court may adjudicate that individual incapacitated and appoint a guardian to oversee that individual's person or property or both. The individual is thereafter referred to as a ward.⁴¹ Through the guardian's appointment, the court transfers a ward's civil and/or legal rights to the guardian so that the guardian may make decisions on the ward's behalf.⁴²

The Legislature has recognized the inherently restrictive nature of guardianship, and directed that alternatives to guardianship and less restrictive means of assistance, such as advance directives,⁴³ guardian advocacy⁴⁴ and limited guardianship,⁴⁵ be explored prior to the appointment of a plenary guardian.⁴⁶

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.⁴⁷ A guardian who has at any time rendered services to three or more non-relative wards is considered a professional guardian, including public guardians.⁴⁸

Office of Public and Professional Guardians

³⁵ S. 435.12, F.S.

³⁶ *Supra*, note 5, at p. 4.

³⁷ Congressional Research Service, Older Americans Act: Overview and Funding, May 17, 2023. (Available at <https://crsreports.congress.gov/product/pdf/R/R43414> (last visited May 22, 2023)).

³⁸ Department of Elder Affairs, Aging and Disability Resource Centers (ADRCs). Available at <https://elderaffairs.org/resource-directory/aging-and-disability-resource-centers-adrcs/> (last visited May 22, 2023).

³⁹ *Supra*, note 13, at p. 8.

⁴⁰ *Id.*, note 38.

⁴¹ S. 744.102(9), F.S.

⁴² Guardianship Improvement Task Force. *Final Report: January 2022*. Available at <https://www.guardianshipimprovementtaskforce.com/report/> (last visited May 11, 2023).

⁴³ See, s. 765.101, F.S., an advance directive indicates a person's preferences for future health care should they become incapacitated, and may include the designation of a health care surrogate to make future health care decisions.

⁴⁴ See, ss. 744.3085 and 393.12, F.S., a guardian advocate may be appointed to a person with developmental disabilities who has not been adjudicated incapacitated.

⁴⁵ See, s. 744.102(9), F.S., a limited guardian is a guardian who has been appointed to exercise only the specific legal rights and powers that a court has found a ward lacks the capacity to exercise.

⁴⁶ S. 744.1012(2), F.S. See also, s. 744.102(9), F.S., a plenary guardian is a guardian who has been appointed to exercise all delegable legal rights and powers of the ward.

⁴⁷ S. 744.2007(1), F.S.

⁴⁸ S. 744.102(17), F.S.

In 1999, the Legislature created the “Public Guardianship Act” and established the Statewide Public Guardianship Office (SPGO) within DOEA.⁴⁹ 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.⁵⁰ 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.⁵¹ There are 16 public guardian offices serving Florida’s 67 counties.⁵²

The executive director of OPPG is responsible for the oversight of all public and professional guardians.⁵³ The executive director’s oversight responsibilities include, but are not limited to:⁵⁴

- 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.⁵⁵ The extent of their current services for non-professional guardians include providing links on OPPG’s website for appropriate resources, such as the Florida State Guardianship Association’s (FSGA) website.⁵⁶ FSGA provides training courses that qualify toward the eight-hours of training that is required of non-professional guardians within four months of appointment.⁵⁷

Guardian Registration

Professional guardians are required to register annually with OPPG.⁵⁸ Since 2016, approximately 550 professional guardians have registered with OPPG statewide.⁵⁹ As part of the registration, the professional guardian must:⁶⁰

- 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;

⁴⁹ S. 744.701, F.S. (1999).

⁵⁰ Ch. 2016-40, L.O.F.

⁵¹ *Supra*, note 13 at p. 43.

⁵² *Id.*, at p. 44.

⁵³ S. 744.2001(2)(a), F.S.

⁵⁴ S. 744.2001, F.S.

⁵⁵ *Id.*

⁵⁶ *Supra*, note 5. See also, Florida State Guardianship Association, *Guardianship Training*. Available at <https://www.floridaguardians.com/education/guardianship-training/> (last visited May 15, 2023).

⁵⁷ S. 744.3145, F.S.

⁵⁸ S. 744.2002, F.S.

⁵⁹ 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 May, 2023).

⁶⁰ 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.⁶¹ The continuing education courses must be approved or offered by OPPG, however, there are no specific content requirements under current law.⁶²

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.⁶³

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.⁶⁴ 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;⁶⁵ 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;⁶⁶ guardians may be disciplined for unethical or illegal actions taken in their role of guardian.⁶⁷ 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.⁶⁸

Disciplinary action may be taken by OPPG against a professional guardian for offenses including, but not limited to:⁶⁹

- 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.⁷⁰ If OPPG finds that a professional guardian has committed an offense constituting grounds for discipline, OPPG may impose any of the following:⁷¹

⁶¹ S. 744.2003(3), F.S.

⁶² *Id.*

⁶³ S. 744.2002, F.S.

⁶⁴ S. 744.446, F.S.

⁶⁵ S. 744.446(5), F.S.

⁶⁶ See rule 58M-2.009, F.A.C.

⁶⁷ S. 744.20041, F.S.

⁶⁸ S. 744.2004(4), F.S.

⁶⁹ S. 744.20041, F.S.

⁷⁰ S. 744.20041(3), F.S.

⁷¹ S. 744.20041(2), F.S.

- Refuse to register an applicant as a professional guardian;
- Suspend or revoke a professional guardian's registration;
- 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:⁷²

- Review and, if determined legally sufficient,⁷³ 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).⁷⁴ In accordance with the memorandum of understanding, the SIA investigates complaints that have been referred by OPPG.⁷⁵ 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

The bill allows any DOEA employee working in the Ombudsman Program to be appointed to local councils. Instead, the bill prohibits DOEA staff who are not employed within the Ombudsman Program from being appointed to a local council, and broadly exempts all Ombudsman Program staff from the prohibition.

This will enable 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

⁷² S. 744.2004, F.S.

⁷³ 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.

⁷⁴ Florida Clerks, *Statewide Investigation Alliance*. Available at <https://flclerksia.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.

⁷⁵ 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://flclerksia.files.wordpress.com/2018/10/doea-clerk-mou-final-executed-7-1-2018.pdf> (last visited April 5, 2023).

conceivable that state office staff could be appointed to local councils outside of the district in which they live and work.⁷⁶

Elder Services Background Screening

The bill expands the types of employees providing services to elderly adults who must undergo a level 2 background screening to include all 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, regardless of whether they have face-to-face contact with a client. Under the bill, such background screening requirements also apply to attorneys, regardless of their standing with the Florida Bar, and health care professionals licensed by DOH who provide services outside of the scope of their license.

The bill also deletes obsolete language relating to DOEA background screening processes prior to DOEA joining the Clearinghouse.

Office of Public and Professional Guardians

The bill 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 receipt. 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 OPPG to provide the complainant and the professional guardian a written statement of findings within 10 business days of an investigation being completed.

The bill 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, all but one of which have since been implemented by rule. The remaining directive is accomplished by the bill's provisions related to the complaint and investigation process (above).

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

⁷⁶ S. 400.0069(4), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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,⁷⁷ 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.

⁷⁷ S. 435.08, F.S.