

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 individuals
4 who may not be appointed as ombudsmen under the State
5 Long-Term Care Ombudsman Program; amending s.
6 430.0402, F.S.; revising exemptions from level 2
7 background screening requirements for certain persons;
8 amending s. 744.2001, F.S.; deleting obsolete
9 language; providing additional duties for the
10 executive director of the Office of Public and
11 Professional Guardians; amending s. 744.2003, F.S.;
12 revising continuing education requirements for
13 professional guardians; amending s. 744.2004, F.S.;
14 requiring the office to notify a complainant within a
15 specified timeframe after determining that a complaint
16 against a professional guardian is not legally
17 sufficient; reducing the timeframe within which the
18 office must complete and provide its initial
19 investigative findings and recommendations, if any, to
20 the professional guardian who is the subject of the
21 investigation and to the complainant; requiring the
22 office to provide a certain written statement to the
23 complainant and the professional guardian within a
24 specified timeframe after completing an investigation;
25 deleting obsolete language; amending s. 744.3145,

26 F.S.; providing an additional method of complying with
 27 certain instruction and education requirements for
 28 court-appointed guardians; amending s. 744.368, F.S.;
 29 requiring clerks of the court to report to the office
 30 within a specified timeframe after the court imposes
 31 any sanctions on a professional guardian; providing an
 32 effective date.

33

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

35

36 Section 1. Paragraph (b) of subsection (4) of section
 37 400.0069, Florida Statutes, is amended to read:

38 400.0069 Long-term care ombudsman districts; local long-
 39 term care ombudsman councils; duties; appointment.—

40 (4) Each district and local council shall be composed of
 41 ombudsmen whose primary residences are located within the
 42 boundaries of the district.

43 (b) The following individuals may not be appointed as
 44 ombudsmen:

45 1. The owner or representative of a long-term care
 46 facility.

47 2. A provider or representative of a provider of long-term
 48 care service.

49 3. An employee of the agency.

50 4. An employee of the department who is not employed in

51 ~~the Long-Term Care Ombudsman Program, except for staff certified~~
52 ~~as ombudsmen in the district offices.~~

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

54 6. An employee of the Agency for Persons with
55 Disabilities.

56 Section 2. Subsections (4), (5), and (6) of section
57 430.0402, Florida Statutes, are renumbered as subsections (3),
58 (4), and (5), respectively, and paragraph (b) of subsection (1),
59 paragraphs (a) and (c) of subsection (2), and subsection (3) of
60 that section 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 includes, but is not limited to,
70 the administrator or a similarly titled person who is
71 responsible for the daily operation of the provider; the
72 financial officer or similarly titled person who is responsible
73 for the financial operation of the provider; coordinators,
74 managers, and supervisors of residential facilities; and
75 volunteers; and any other person seeking employment with a

76 provider who is expected to or whose responsibilities may
 77 require him or her to provide personal care or services directly
 78 to clients or have access to client funds, financial matters,
 79 legal matters, personal property, or living areas.

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

83 (a)~~1.~~ Licensed physicians, nurses, or other professionals
 84 licensed by the Department of Health who are providing a service
 85 that is within the scope of their license, ~~who~~ have been
 86 fingerprinted and undergone background screening as part of
 87 their licensure; ~~and~~

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
 93 less than 20 hours per month and who are not listed on the
 94 Department of Law Enforcement Career Offender Search or the Dru
 95 Sjodin 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,
117 Florida Statutes, are amended to read:

118 744.2001 Office of Public and Professional Guardians.—
119 There 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
144 ensure compliance of professional guardians with the standards
145 of practice established by the Office of Public and Professional
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;
 161 application; bond required; educational requirements.—

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

174 satisfy the educational requirements prescribed in this section
175 may not be paid with the assets of any ward. This subsection
176 does not apply to any attorney ~~who is~~ licensed to practice law
177 in this state or an institution acting as guardian under s.
178 744.2002(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
198 and recommendations, if any, to the professional guardian and

199 the person who filed the complaint within 45 ~~60~~ days after
 200 receipt of a complaint.

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

203 (e) Interview a ward, a family member, or an interested
 204 party to 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) ~~(g)~~ Coordinate, to the greatest extent possible, with
 215 the clerks of court to avoid duplication of duties with regard
 216 to 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

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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
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.