

Committee on Children, Families, And Elder Affairs

CS/CS/HB 441 — Elder-focused Dispute Resolution Process

by Judiciary Committee; Civil Justice and Property Rights Subcommittee; and Rep. Hage
(CS/CS/SB 368 by Appropriations Committee; Judiciary Committee; and Senator Baxley)

The bill creates an alternative dispute resolution process for persons 60 years of age and older who are involved in certain legal proceedings. Specifically, the bill allows a court to appoint an eldercaring coordinator to assist in disputes that can impact an elder's safety and autonomy. The court must specifically define the scope of an eldercaring coordinator's authority in its order of appointment.

An eldercaring coordinator may be appointed for up to 2 years, although a court has discretion to extend or suspend the appointment as needed. In order to be appointed as an eldercaring coordinator, an applicant must:

- Meet a specified professional licensing requirement, such as membership in The Florida Bar or being a licensed nurse;
- Complete 3 years of post-licensing or post-certification practice;
- Receive training in family and elder mediation;
- Receive 44 hours in eldercare coordinator training, which must offer training on topics including, among other things:
 - Elder, guardianship, and incapacity law;
 - Family dynamics;
 - Multicultural competency; and
 - Elder abuse, neglect, and exploitation.
- Successfully pass a background check; and
- Have not been a respondent in a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person.

The bill provides that an eldercaring coordinator may be removed or disqualified if the coordinator no longer meets the minimum qualifications or upon court order.

The bill requires an equal amount of fees and costs for eldercaring coordination to be paid by each party, subject to an exception. If a court finds that a party is indigent, the bill prohibits the court from ordering the party to eldercaring coordination unless funds are available to pay the indigent party's allocated portion. Likewise, cases involving exploitation of an elder or domestic violence are ineligible for a referral without the consent of the parties involved. The court must offer each party the opportunity to consult with either an attorney or a domestic violence advocate prior to accepting consent of the referral and the court is required to determine whether each party has given their consent freely and voluntarily.

When a court is determining whether to refer parties that may have an above-mentioned history that would otherwise preclude the referral, the court must consider whether a party has:

- Committed an act of exploitation or domestic violence against another party or any member of another party's family;
- Engaged in a behavioral pattern where power and control are used against another party and that could jeopardize another party's ability to negotiate fairly; or
- Behaved in a way that leads another party to reasonably believe he or she is in imminent danger of becoming a victim of domestic violence.

If the court refers a case to eldercaring coordination that involves a party who has any history of domestic violence or exploitation of an elder, the court must order necessary precautions to ensure safety of specified persons and property.

The bill provides that all communications that meet specified requirements and are made during eldercaring coordination must be kept confidential. The bill provides that parties to the eldercaring coordination, including the coordinator, may not testify unless one of the enumerated exceptions applies. The bill also provides remedies for breaches of confidentiality.

The bill provides legislative findings and requires the Florida Supreme Court to establish minimum standards and procedures for training, qualifications, discipline, and education of eldercaring coordinators. The bill also defines a number of terms, including:

- "Action";
- "Care and safety";
- "Elder";
- "Eldercaring coordination";
- "Eldercaring coordination communication";
- "Eldercaring coordinator";
- "Eldercaring plan";
- "Good cause";
- "Legally authorized decisionmaker";
- "Participant"; and
- "Party."

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 119-0