

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1891 Elderly & Disabled Persons  
**SPONSOR(S):** Rep. Fiorentino  
**TIED BILLS:** **IDEN./SIM. BILLS:** Cs/SB 1782

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder Affairs & Long Term Care	7 Y, 0 N	Meyer	Liem
2) Future of Florida's Families	14 Y, 0 N	Meyer	Liem
3) Appropriations		Massengale	Hansen
4)			
5)			

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### SUMMARY ANALYSIS

House Bill 1891 is related to disabled and elderly persons. It provides statutory authority for non-licensed staff to administer or assist with the administration of medications to persons with developmental disabilities.

It returns the word "caregiver" to the definition of abuse in chapter 415, F.S., related to abuse of vulnerable adults. It clarifies that being hospitalized does in and of itself make a person a "vulnerable adult". It allows the Department of Children and Family Services to use pre-paid capitation payment arrangements for behavioral health services. It allows the department to reimburse for actual expenditures for startup contracts and fixed capital outlay contracts.

The bill revises the health care proxy statute to provide for appointment of a proxy in those cases where the incapacitated person has not appointed a surrogate, does not have a guardian or a living will, and has no person among the various parties provided for in statute to be a decision maker for him or her.

The bill transfers the Office of the Statewide Public Guardianship from being "administratively housed" in the Department of Elder Affairs to being under the direction of the Secretary. Allows DOEA to contract for operation of the Office, and creates a task force to study guardianship. Requires competency examination and background screening for professional guardians.

Professional guardians would be required to pay for background screening, a credit check, an examination and a registration fee. Background screening is approximately \$35. The registration fee could be a maximum of \$100; the maximum cost for the examination is set at \$500.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1891a.ap.doc  
**DATE:** April 23, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Medication

The bill allows non-licensed staff of programs serving developmentally disabled persons to administer or assist with the administration of medication.

##### Payment Methods

The bill allows the mental health program in DCF to use a variety of payment methods and to reimburse for start up costs for some contractors.

##### Adult Abuse

The bill returns the word "caregiver" to the definition of abuse in chapter 415 related to the abuse, neglect, or exploitation of vulnerable adults. This clarifies that the Hotline at DCF is required to accept only those calls alleging abuse by a caregiver. This definition was revised in 1999 and the change of "caregiver" to "person" has had unintended consequences. The Hotline has accepted for investigation calls alleging that a law enforcement officer, acting in his or her official capacity, was abusive to a vulnerable adult. The statute states, however, that the department does not have jurisdiction over law enforcement officers or employees of municipal or county detention facilities or Department of Corrections when those employees are acting in their official capacity. See section 415(4), F.S.

##### Health Care Proxy

The existing proxy health care decision maker section allows decisions to be made by a list of alternative persons. However, there is no provision for a person in need of health care who does not have a spouse, adult child, a parent, a sibling, an adult relative, or a close friend who is reasonable available and willing or competent to act. The bill provides that in those circumstances the health care facility's bio-ethics committee can appoint a social worker, a person who has completed a court-approved guardianship training course. If the provider does not have a bioethics committee, the proxy may be chosen through an arrangement with the bioethics committee of another provider or from a community bioethics committee. The bill provides that the health care provider will make a second physician available to the proxy, if requested, to assist in evaluating treatment choices.

##### Guardianship Background

Under chapter 744, F.S., a person who has been determined to be incapacitated (they lack the capacity or "competence" to manage property or meet essential health and safety requirements) through a judicial proceeding is appointed a guardian. A person so judged is termed a "ward." A guardian is a person or an entity that has been appointed by the court to act on behalf of ward's person, or property, or both. A "professional guardian" is a guardian who receives compensation for his or her services.

DOEA reports that they consistently receive inquiries and complaints from family members and the general public. These inquires allege abuse, neglect, and exploitation by professional guardians of their wards. According to a recent Senate bill analysis, it is not known how many professional guardians are operating in the state, there is no mechanism for addressing problems that may span a professional guardian's entire caseload, and there is no statewide oversight of professional guardians.

The Statewide Public Guardianship Office (SPGO) was created by the Legislature in 1999. It was "administratively housed" in the DOEA, but not subject to the control, supervision, or direction of the department. The goal was to replace the various public guardianship programs that were under the auspices of the judicial branch. The SPGO's responsibility was to assume oversight of the delivery of guardianship services to indigent persons and to expand the availability of those services.

### **Guardianship Changes**

HB 1891 transfers the SPGO under the direction of the secretary of DOEA who will hire the executive director of the office. The bill also provides that public guardians shall be considered professional guardians. The maximum fee allowed for registration is raised to \$100 and the maximum fee for the required examination is \$500.

Each professional guardian will be required to allow a background and credit check. After July 1, 2005, each professional guardian will be required to demonstrate competency by taking an examination. DOEA is assigned responsibility for implementing this requirement in consultation with the Florida Guardianship Foundation. After July 1, 2004, the court will not be able to appoint any professional guardian who has not met the requirements for competency and screening.

The bill allows a guardian, without the court's permission, to reveal confidential information about a ward if it that information is related to an investigation conducted by the Long Term Care Ombudsman and to hire care managers. Currently, guardians are permitted to hire attorneys, auditors, investment advisers or agents to assist the guardian in performing their duties.

### **C. SECTION DIRECTORY:**

Section 1 creates section 393.506, F.S., related to medication administration.

Section 2 creates section 400.9685, F.S., related to medication administration.

Section 3 amends section 394.74, F.S., related to mental health contracting and payment.

Section 4 amends section 415.102, F.S., related to the definitions of "abuse" and "exploitation" of vulnerable adults.

Section 5 amends section 765.401, F.S., related to the selection of a proxy.

Section 6 amends section 744.102, F.S., related to the definition of a "professional guardian."

Section 7 amends section 744.1083, F.S., related to registration of professional guardians.

Section 8 amends section 744.1085, F.S., related to regulation of professional guardians.

Section 9 amends section 744.3135, F.S., related to investigations of guardians.

Section 10 amends section 744.444, F.S., related to the powers of guardians without court approval.

Section 11 amends section 744.534, F.S., related to unclaimed funds to make a conforming change.

Section 12 amends section 744.7021, F.S., transfers the SPGO to DOEA.

Section 13 amends section 744.704, F.S., related to the powers and duties of a guardian.

Section 14 creates a task force to study guardianship.

Section 15 provides that this act take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The department would offset the costs associated with registration and with the required competency test by collecting fees sufficient to meet those costs.

#### **2. Expenditures:**

No new expenditures are required except as described above. Other expenditures would continue as the Office was transferred under the direction of the department.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

No impact is projected.

#### **2. Expenditures:**

No new expenditures are projected.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Professional guardians would be required to pay for background screening, a credit check, an examination and a registration fee. Background screening is approximately \$35. The registration fee could be a maximum of \$100; the maximum cost for the examination is set at \$500.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

Rule writing authority is transferred to DOEA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

In the April 9, 2003 meeting of the Elder Affairs and Long Term Care Subcommittee, one amendment related to the guardianship was recommended. The Future of Florida's Families Committee adopted that amendment and reported the PCB favorably. That amendment changes the following:

- Transfers the Statewide Public Guardianship Office under the supervision and responsibility of DOEA secretary (It is currently "*administratively housed*" in the department). Transfers rule authority to DOEA from the Office.
- Adds a provision that "a public guardian shall be considered a professional guardian."
- Provides that the Secretary of DOEA will appoint the executive director of the Statewide Public Guardianship Office.
- Allows DOEA to contract with Florida Guardianship Foundation to register guardians; and the Foundation is allowed to contract with clerks of court to handle the actual registration (as is done now).
- Amends regulation of professional guardians to require a credit history check; level 2 screening; and competency test. A maximum fee for the test is set at \$500. A maximum fee for registration is set at \$100.
- After July 1, 2004, the Court shall appoint only professional guardians who have registered.
- Allows guardians to provide confidential information to an ombudsman doing an investigation pursuant to Part I chapter 400, F.S., and to hire care managers without first obtaining the court's permission.
- Provides that public guardians shall primarily serve persons of limited financial means.
- Creates a task force to study guardianship and report recommendations for changes and improvements to the secretary.

The Future of Florida's Families Committee also reported favorably an amendment that removed the changes to section 415.1111, F.S.