

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7025 PCB CFS 20-01 Guardianship
SPONSOR(S): Children, Families & Seniors Subcommittee, Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 1762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee	15 Y, 0 N	Morris	Brazzell
1) Health Care Appropriations Subcommittee	9 Y, 0 N	Nobles	Clark
2) Health & Human Services Committee	16 Y, 0 N	Morris	Calamas

SUMMARY ANALYSIS

Guardianship is a concept whereby a “guardian” acts on behalf of a “ward” whom the law regards as incapable of managing his or her own person or property, or both, due to age or incapacity. A court may appoint a public or private guardian if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian of that ward. Before a guardian may be appointed to act for the ward, a court must determine that the ward is incapable of handling his or her affairs. HB 7025 amends sections of law relating to guardianship.

The bill removes the requirement that the executive director of the Office of Public and Professional Guardians (OPPG) within the Department of Elder Affairs (DOEA) be a member of the Florida Bar. It revises the duties of the executive director of the OPPG to include offering and making certain information about guardianship available for dissemination by the Area Agencies on Aging and Aging Resource Centers in this state.

It requires professional guardians to submit and maintain information with the OPPG relating to their employees and counties in which they are appointed to a ward.

The bill increases the continuing education requirements of professional guardians and specifies which topics are required to be studied.

The bill revises the process by which the OPPG investigates complaints by providing a timeline of events and notification requirements to guardians and complainants of the investigation process.

The bill requires the Clerks of the Circuit Court (Clerks) to report sanctions imposed by the court on a professional guardian to the OPPG.

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

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 someone who is 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.¹ Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.² The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.³

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.⁴ Once a person has been adjudicated incapacitated (termed a "ward"), the court appoints a guardian, and the letters of guardianship are issued.⁵ The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.⁶

Appointment of a Guardian

The following may be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation, or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, and serves without compensation;
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests; or
- A for-profit corporation that meets certain qualifications, including being wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed.⁷

Guardians⁸ who are not professional guardians are required to complete 8 hours of instruction and training through a course approved by the chief judge of the circuit court and taught by a court-

¹ S. 744.102(9), F.S.

² S. 744.101(1), F.S.

³ S. 744.101(2), F.S.

⁴ S. 744.3201, F.S.

⁵ ss. 744.3371-744.345, F.S.

⁶ S. 744.2005, F.S.

⁷ s. 744.309, F.S.

⁸ Other than a parent who is the guardian of the property of a minor child.

approved organization within 4 months after being appointed to a ward.⁹ The instruction and training must cover:¹⁰

- The legal duties and responsibilities of the guardian;
- The rights of the ward;
- The availability of local resources to aid the ward; and
- The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.

Office of Public and Professional Guardians

In 1999 the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within the Department of Elder Affairs (DOEA).¹¹ By December 2013, the SPGO had expanded public guardianship services to cover all 67 counties.¹² In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added 6 full-time equivalent positions to the OPPG, including an attorney and investigators.¹³ The 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.¹⁴

There are 17 public guardian offices that serve all 67 counties.¹⁵ In fiscal year 2017-2018, the public guardian offices served 3,846 wards.¹⁶ Currently, there are 515 professional guardians registered with the Office of Public and Professional Guardians within the Department of Elder Affairs.¹⁷ The total number of wards served by registered professional guardians in this state is unknown by DOEA.¹⁸

Executive Director

The executive director of the OPPG is responsible for the oversight of all public and professional guardians.¹⁹ The Secretary of the DOEA appoints the executive director as the head of the OPPG. The executive director must:²⁰

- Be a member of the Florida Bar;
- Be knowledgeable of guardianship law and of the social services available to meet the needs of incapacitated persons;
- Serve on a full-time basis; and
- Personally, or through a representative of the OPPG, carry out the purposes and functions of the OPPG in accordance with state and federal law.

The executive director's oversight responsibilities for professional guardians include standards of practice for public and professional guardians and reviewing and approving the standards and criteria for the education, registration, and certification of public and professional guardians. The executive director is also responsible for developing a guardianship training program curriculum that may be

⁹ S. 744.3145, F.S.

¹⁰ Id.

¹¹ S. 744.701, F.S. (1999).

¹² Florida Department of Elder Affairs, Summary of Programs and Services, February, 2014, available at http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2014/2014%20SOPS_complete.pdf (last visited Jan. 13, 2020).

¹³ Ch. 2016-40, Laws of Florida.

¹⁴ Department of Elder Affairs, *Office of Public and Professional Guardians*, available at <http://elderaffairs.state.fl.us/doea/spgo.php> (last visited Jan. 13, 2020).

¹⁵ Office of Public and Professional Guardians, *2018 Annual Report*, available at http://elderaffairs.state.fl.us/doea/SPGO/pubs/OPPG_AR_2018.pdf (last visited Jan. 13, 2020).

¹⁶ Id.

¹⁷ Email from Derek Miller, Legislative Analyst, Department of Elder Affairs, RE: HB 709 Analysis, (Dec. 9, 2019).

¹⁸ Id.

¹⁹ S. 744.2001(2)(a), F.S.

²⁰ S. 744.2001, F.S.

offered to all guardians. He or she is also responsible for 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 (clerk) in order to avoid a duplication of efforts. The executive director must develop 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 establish disciplinary proceedings, conducting hearings, and taking administrative action under ch. 120, F.S.

Complaint Investigations

Any person may submit a complaint against a professional guardian to the OPPG. Once the OPPG receives a complaint, it is required to:

- Review and, if determined legally sufficient,²¹ 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.

In a presentation to the Children, Families, and Seniors Subcommittee on November 7, 2019, the Secretary of DOEA noted a backlog of complaints that had gone uninvestigated.²² Almost 300 complaints have been received by the OPPG since 2017. As of October 12, 2019, 193 backlogged investigations were completed, leading to 13 registration revocation letters, 1 administrative complaint, 6 reprimand letters, and 42 letters of concern.²³

The OPPG has undergone operational improvements, including:²⁴

- Revising its investigation referral process;
- Implementing new processes to improve transparency and responsiveness to complainants and affected guardians following the completion of investigations; and
- Continuing efforts with the Clerks to improve complaint intake and referral procedures.

Professional Guardians

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.²⁵ A public guardian is considered a professional guardian for purposes of regulation, education, and registration.²⁶

Registration

²¹ 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.

²² Presentation to the Children, Families, and Seniors Subcommittee by the Florida Department of Elder Affairs, <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3019&Session=2020&DocumentType=Meeting%20Packets&FileName=cfs%2011-7-19.pdf> (Nov. 7, 2019).

²³ Id.

²⁴ Id.

²⁵ S. 744.102(17), F.S

²⁶ Id.

A professional guardian must register with the OPPG annually.²⁷ As part of the registration, the professional guardian must:²⁸

- 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 (may not be paid with the assets of the ward);
- Successfully pass an examination approved by DOEA²⁹ to demonstrate competency to act as a professional guardian;
- 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.

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.³⁰

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.³¹ The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.³²

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines 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.³³ The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of component jurisdiction for any guardianship case to which the professional guardian is currently appointed.³⁴ However, the court is the only entity that can remove a guardian from a case to which he or she has been appointed. Also, the court or the clerk is not required to report removal of guardians to the OPPG.

Responsibilities of the Clerk of the Circuit Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure that it contains required information about the ward.³⁵ Guardians are required to file initial reports and annual reports consisting of accounting and/or guardianship plans after they are appointed to a ward.³⁶ The initial guardianship report, for a guardian of a ward's property, must consist of a verified inventory of such property.³⁷ For a guardian of a person, the initial guardianship report must consist of an initial guardianship plan, including details such as where the ward will live and any medical or social services the ward may need.³⁸ Annual plans must consist of an annual accounting of the ward's property and the process by which the ward is being served by the guardian.³⁹

²⁷ S. 744.2002, F.S.

²⁸ S. 744.2002(3), F.S.; S. 744.2003, F.S.; S. 744.3135, F.S.

²⁹ The examination is currently administered by the University of South Florida's College of Education. University of South Florida, *Florida Professional Guardian Examination*, <http://guardianship.usf.edu/index.html> (last visited Jan. 13, 2020).

³⁰ S. 744.2003(3), F.S.

³¹ S. 744.3135(1), F.S.

³² S. 744.2002(9), F.S.

³³ S. 744.2002, F.S.

³⁴ S. 744.2004(4), F.S.

³⁵ S. 744.368, F.S.

³⁶ S. 744.361, F.S.

³⁷ S. 744.362, F.S.,

³⁸ Ss. 744.362–744.363, F.S.

³⁹ S. 744.367, F.S.

The clerk is required to complete his or her review of the initial or annual report within 30 days after the filing of such reports.⁴⁰ The clerk is also required to audit the verified inventory and accountings report within 90 days of its filing, and report his or her findings to the court.⁴¹ The clerk must notify the court when a required report is not timely filed by a guardian.⁴²

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.⁴³

If a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order requiring a guardian to file the report.⁴⁴ The judge may also impose sanctions on the guardian, which may include contempt, removal of the guardian, and fines.⁴⁵

Guardian Investigations

In July 2019, Steven Stryker, a ward appointed to professional guardian Rebecca Fierle,⁴⁶ died in a Tampa hospital after choking on food.⁴⁷ Hospital staff could not perform lifesaving procedures on him due to a do-not-resuscitate order (DNRO) executed by Fierle.⁴⁸

It was also reported that Fierle had billed AdventHealth, an Orlando area hospital, approximately \$4 million for services rendered to wards⁴⁹ and developed conflicts of interest with members of appointed examining committees used to determine incapacity of a person.⁵⁰

The Clerk of the Circuit Court and Comptroller of Okaloosa County (Clerk)⁵¹ investigated complaints filed against Fierle with the OPPG. The Clerk found Fierle had executed a DNRO against Stryker's wishes, violating the standards of practice established by the OPPG.⁵² The Clerk reported that Fierle kept a DNRO in place after a psychiatrist examined Stryker while he was admitted to St. Joseph's Hospital and determined Stryker had the ability to decide that he wanted to live and stated that Stryker wanted to be resuscitated.

The Orange County Comptroller also investigated Fierle's guardianships.⁵³ The Comptroller found Fierle had submitted over 6,000 invoices and charges of at least \$3.9M to AdventHealth for payments between January 2009 and June 2019.⁵⁴ The payments were made on behalf of 682 patients. The Comptroller also found that in some cases Fierle had billed both AdventHealth and the wards for identical fees and services. Additionally, the Comptroller identified conflicts of interest, including several situations in which Fierle had previous relationships with wards to whom she was appointed guardian and did not disclose these relationships in the petitions for appointment of a guardian.

⁴⁰ *Supra*, note 35.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ss. 744.368–744.3685, F.S.

⁴⁵ S. 744.3685(3) and S. 744.367(5), F.S.

⁴⁶ The Orlando Sentinel, *Florida's Troubled Guardian Program*, <https://www.orlandosentinel.com/news/florida/guardians/> (last visited Dec. 6, 2019).

⁴⁷ Adrianna Iwasinski, *Orange commissioners approve new position to help monitor guardianship cases*, Click Orlando (Oct. 22, 2019), <https://www.clickorlando.com/news/2019/10/23/orange-commissioners-approve-new-position-to-help-monitor-guardianship-cases/> (last visited Jan. 13, 2020).

⁴⁸ *Id.*

⁴⁹ *Supra* note 46.

⁵⁰ Monivette Cordeiro, *Florida's troubled guardianship system riddled with conflicts of interest, critics claim | Special Report*, Orlando Sentinel (Aug. 14, 2019), <https://www.orlandosentinel.com/news/florida/guardians/os-ne-guardianship-examining-committee-conflicts-20190814-osbekpwnlfezneolyxtvzmrhy-story.html> (last visited Jan. 13, 2020).

⁵¹ J.D. Peacock II, Clerk of the Circuit Court and Comptroller Okaloosa County, Florida, *OPPG Investigation Case Number 19-064* (July 9, 2019), <https://www.scribd.com/document/417992870/Fierle-State-Report> (last visited Jan. 13, 2020).

⁵² *Id.*

⁵³ Orange County Comptroller, *Report No. 479 – Investigation of Payments Made to Professional Guardian – Rebecca Fierle by AdventHealth*, <https://www.occompt.com/download/Audit%20Reports/rpt479.pdf> (last visited Jan. 13, 2020).

⁵⁴ *Id.*

An Orange County judge removed Fierle from nearly 100 cases to which she had been appointed.⁵⁵ Fierle has appealed the judge's decision.⁵⁶ In a letter to the OPPG, Fierle resigned from all appointed guardianship cases (approximately 450 in 13 counties) in July, 2019.⁵⁷ As of November 2019, Fierle is under criminal investigation by the Florida Department of Law Enforcement.⁵⁸

In January 2017, the Clerk and Comptroller for Lake County conducted an investigation into a complaint filed against Fierle.⁵⁹ The complaint made several allegations against Fierle, including that Fierle was "not following statutes." The investigation report noted information they came across in their investigation into Fierle, including noting that Fierle employed staff whose responsibilities included "visiting wards, reviewing the charts of wards and participating in their care plans, inspecting the physical health of the wards, and ensuring their needs were being met and they are getting the proper care." The investigation report stated that there is no clear requirement to disclose the names and information of a guardian's employees to the OPPG or to the courts and that employees with direct, unsupervised access to wards are not held to the same requirements of a credit history check and level 2 background check which is required for employees who have a fiduciary responsibility to the ward. The investigation report concludes that the OPPG should consider "the need for appropriate legislation and/or rules to better protect wards in these circumstances."

Effect of Proposed Changes

Office of Public and Professional Guardians

The bill revises the requirements and responsibilities of the executive director of the OPPG. Specifically, the bill removes the requirement that the executive director of the OPPG be a member of the Florida Bar. It requires the executive director, within available resources, to offer an online education course for guardians who are not professional guardians. The bill also requires the OPPG to provide information relating to guardianship to Area Agencies on Aging and Aging Resource Centers for dissemination to the populations they serve, allowing the public to become more aware of guardianships and what options may be available to them.

Professional Guardians

The bill revises the continuing education requirements of professional guardians by increasing the hours of continuing education required to be taken by a professional guardian from 16 hours to 20 hours every two years and be completed through a course approved or offered by the OPPG. The bill specifically requires that continuing education include at least:

- 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 requires professional guardians to submit and maintain the names and titles of their employees and the counties in which they are appointed to a ward with the OPPG.

Complaint Investigations by the OPPG

⁵⁵ *Supra* note 46.

⁵⁶ *Id.*

⁵⁷ Greg Angel, *Embattled Guardian Resigns From Cases Statewide; Criminal Investigation Continues*, Spectrum News 13 (July 29, 2019), <https://www.mynews13.com/fl/orlando/crime/2019/07/29/embattled-guardian-resigns-from-cases-statewide> (last visited Jan. 13, 2020).

⁵⁸ Greg Angel, *Watchdog: Judge Dismisses Embattled Guardian's Appeal to Reverse Court Order*, Spectrum News 13 (Nov. 19, 2019) <https://www.mynews13.com/fl/orlando/news/2019/11/19/watchdog-fierle-appeal-to-reverse-court-order-dismissed> (last visited Jan. 13, 2020).

⁵⁹ Neil Kelly, Clerk of Circuit Court, Lake County Florida, *Investigation Report Case Number 2016-002*, (Jan. 9, 2017) (on file with Children, Families, and Seniors Subcommittee staff).

The bill revises the process by which the 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. The OPPG must notify the complainant no later than 10 business days after the OPPG determines a complaint is not legally sufficient. Additionally, within 45 business days after receipt of a complaint by the OPPG, it must complete and provide initial investigative findings and recommendations, if any, to the professional guardian and the complainant. Within 10 business days after completing an investigation, the OPPG must provide the complainant and the professional guardian with a written statement specifying any finding of a violation of a standard of practice by a professional guardian and any actions taken, or specifying that no such violation was found.

Guardian Education Requirements

The bill allows a guardian who is not a professional guardian to complete his or her required eight hours of education through a course offered by the OPPG, in addition to a course approved by the chief judge of the circuit court and taught by a court-approved organization. Additionally, the bill removes the ability of the court to waive some or all of the education requirements of a guardian.

Responsibilities of the Clerk of the Circuit Court

The bill adds the reporting of any sanctions imposed by the court on a professional guardian, including, but not limited to, contempt of court or removal of the professional guardian, to the responsibilities of the clerk of the circuit court. The clerk must submit such information to the OPPG within 10 business days after the court imposes any sanctions, which will close the communication loop between the court and the OPPG.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 744.2201, F.S., relating to Office of Public and Professional Guardians.

Section 2: Amends s. 744.2003, F.S., relating to regulation of professional guardians; application; bond required; educational requirements.

Section 3: Amends s. 744.2004, F.S., relating to complaints, disciplinary proceedings, penalties, enforcement.

Section 4: Amends s. 744.3145, relating to guardian education requirements.

Section 5: Amends s. 744.368, F.S., relating to responsibilities of the clerk of the circuit court.

Section 6: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the OPPG to offer and place online an education course for use by guardians who are not professional guardians, and to provide information on guardianship for the Area Agencies on Aging and the Aging and Disability Resource Centers to disseminate. OPPG must also implement new procedural changes. Per DOEA, these changes have no fiscal impact on DOEA.

OPPG must also collect additional information from guardians. Per DOEA, these changes have no fiscal impact on DOEA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expenses incurred by a guardian who is not a professional guardian to satisfy his or her required training may be paid from the ward's estate, unless the court directs that such expenses be paid by the guardian individually.

The increase in the required continuing education hours for professional guardians may result in a negative fiscal impact on the professional guardians as a ward's assets may not be used to fund this continuing education.

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:

Current law provides sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES