

By Senator Baxley

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1 A bill to be entitled
2 An act relating to an elder-focused dispute resolution
3 process; creating s. 44.407, F.S.; providing
4 legislative findings; defining terms; authorizing the
5 courts to appoint an eldercaring coordinator and refer
6 certain parties and elders to eldercaring
7 coordination; prohibiting the courts from referring
8 certain parties to eldercaring coordination without
9 the consent of the elder and other parties to the
10 action; specifying the duration of eldercaring
11 coordinator appointments; requiring the courts to
12 conduct intermittent review hearings regarding the
13 conclusion or extension of such appointments;
14 providing qualifications and disqualifications for
15 eldercaring coordinators; providing for the removal
16 and suspension of authority of certain eldercaring
17 coordinators; requiring that notice of hearing on
18 removal of a coordinator be timely served; authorizing
19 the courts to award certain fees and costs under
20 certain circumstances; requiring the court to appoint
21 successor eldercaring coordinators under certain
22 circumstances; authorizing the courts to make certain
23 determinations based on the fees and costs of
24 eldercaring coordination; providing that certain
25 communications between the parties and eldercaring
26 coordinators are confidential; providing exceptions to
27 confidentiality; providing requirements for emergency
28 reporting to courts under certain circumstances;
29 providing immunity from liability for certain parties

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30 under specified circumstances; requiring the Florida
31 Supreme Court to establish certain minimum standards
32 and procedures for eldercaring coordinators; providing
33 an effective date.

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

36
37 Section 1. Section 44.407, Florida Statutes, is created to
38 read:

39 44.407 Elder-focused dispute resolution process.-

40 (1) LEGISLATIVE FINDINGS.-The Legislature finds that:

41 (a) Denying an elder a voice in decisions regarding himself
42 or herself may negatively affect the elder's health and well-
43 being, as well as deprive the elder of his or her legal rights.
44 Even if an elder is losing capacity to make major decisions for
45 himself or herself, the elder is still entitled to the dignity
46 of having his or her voice heard.

47 (b) As an alternative to proceedings in court, it is in the
48 best interest of an elder, their family members, and legally
49 recognized decisionmakers to have access to a nonadversarial
50 process to resolve disputes relating to an elder which focuses
51 on the elder's wants, needs, and best interests. Such a process
52 will protect and preserve the elder's exercisable rights.

53 (c) By recognizing that every elder, including those whose
54 capacity is being questioned, has unique needs, interests, and
55 differing abilities, the Legislature intends for this section to
56 promote the public welfare by establishing a unique dispute
57 resolution option to complement and enhance, not replace, other
58 services, such as the provision of legal information or legal

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59 representation; financial advice; individual or family therapy;
60 medical, psychological, or psychiatric evaluation; or mediation,
61 specifically for issues related to the care and needs of elders.
62 The Legislature intends that this section be liberally construed
63 to accomplish these goals.

64 (2) DEFINITIONS.—As used in this section, the term:

65 (a) "Action" means a proceeding in which a party sought or
66 seeks a judgment or an order from the court to:

67 1. Determine if someone is or is not incapacitated pursuant
68 to s. 744.331.

69 2. Appoint or remove a guardian.

70 3. Undertake an investigation pursuant to s. 415.104.

71 4. Audit an annual guardianship report.

72 5. Review a proxy's decision pursuant to s. 765.105.

73 6. Appoint a guardian advocate pursuant to s. 393.12.

74 7. Enter an injunction for the protection of an elder under
75 s. 825.1035.

76 8. Follow up on a complaint made to the Office of Public
77 and Professional Guardians pursuant to s. 744.2004.

78 9. Address advice received by the court from the clerk of
79 the court pursuant to s. 744.368(5).

80 10. At the discretion of the presiding judge, address other
81 matters pending before the court which involve the care or
82 safety of an elder or the security of an elder's property.

83 (b) "Elder" means a person 60 years of age or older who is
84 alleged to be suffering from the infirmities of aging as
85 manifested by a physical, a mental, or an emotional dysfunction
86 to the extent that the elder's ability to provide adequately for
87 the protection or care of his or her own person or property is

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88 impaired.

89 (c) "Eldercaring coordination" means an elder-focused
90 dispute resolution process during which an eldercaring
91 coordinator assists an elder, legally authorized decisionmakers,
92 and others who participate by court order or by invitation of
93 the eldercaring coordinator, in resolving disputes regarding the
94 care and safety of an elder by:

95 1. Facilitating more effective communication and
96 negotiation and the development of problem-solving skills.

97 2. Providing education about eldercare resources.

98 3. Facilitating the creation, modification, or
99 implementation of an eldercaring plan and reassessing it as
100 necessary to reach a resolution of ongoing disputes concerning
101 the care and safety of the elder.

102 4. Making recommendations for the resolution of disputes
103 concerning the care and safety of the elder.

104 5. With the prior approval of the parties to an action or
105 of the court, making limited decisions within the scope of the
106 court's order of referral.

107 (d) "Eldercaring coordination communication" means an oral
108 or a written statement or nonverbal conduct intended to make an
109 assertion by or to an eldercaring coordinator or individuals
110 involved in eldercaring coordination made during an eldercaring
111 coordination activity, or before the activity if made in
112 furtherance of eldercaring coordination. The term does not
113 include statements made during eldercaring coordination which
114 involve the commission of a crime, the intent to commit a crime,
115 or ongoing abuse, exploitation, or neglect of a child or
116 vulnerable adult.

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117 (e) "Eldercaring coordinator" means an impartial third
118 person who is appointed by the court or designated by the
119 parties and who meets the requirements of subsection (5). The
120 role of the eldercaring coordinator is to assist parties through
121 eldercaring coordination in a manner that respects the elder's
122 need for autonomy and safety.

123 (f) "Eldercaring plan" means a continually reassessed plan
124 for the items, tasks, or responsibilities needed to provide for
125 the care and safety of an elder which is modified throughout
126 eldercaring coordination to meet the changing needs of the elder
127 and which takes into consideration the preferences and wishes of
128 the elder. The plan is not a legally enforceable document, but
129 is meant for use by the parties and participants.

130 (g) "Good cause" means a finding that the eldercaring
131 coordinator:

132 1. Is not fulfilling the duties and obligations of the
133 position;

134 2. Has failed to comply with any order of the court, unless
135 the order has been superseded on appeal;

136 3. Has conflicting or adverse interests that affect his or
137 her impartiality;

138 4. Has engaged in circumstances that compromise the
139 integrity of eldercaring coordination; or

140 5. Has had a disqualifying event occur.

141

142 The term does not include a party's disagreement with the
143 eldercaring coordinator's methods or procedures.

144 (h) "Legally authorized decisionmaker" means an individual
145 designated, either by the elder or by the court, pursuant to

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146 chapter 709, chapter 744, chapter 747, or chapter 765 who has
147 the authority to make specific decisions on behalf of the elder
148 who is the subject of an action.

149 (i) "Participant" means an individual who joins eldercaring
150 coordination by invitation of or with the consent of the
151 eldercaring coordinator but who has not filed a pleading in the
152 action from which the case was referred to eldercaring
153 coordination.

154 (j) "Party" includes the elder who is the subject of an
155 action and any other individual over whom the court has
156 jurisdiction.

157 (3) REFERRAL.—

158 (a) Upon agreement of the parties to the action, the
159 court's own motion, or the motion of a party to the action, the
160 court may appoint an eldercaring coordinator and refer the
161 parties to eldercaring coordination to assist in the resolution
162 of disputes concerning the care and safety of the elder who is
163 the subject of an action.

164 (b) The court may not refer a party who has a history of
165 domestic violence or exploitation of an elderly person to
166 eldercaring coordination unless the elder and other parties in
167 the action consent to such referral.

168 1. The court shall offer each party an opportunity to
169 consult with an attorney or a domestic violence advocate before
170 accepting consent to such referral. The court shall determine
171 whether each party has given his or her consent freely and
172 voluntarily.

173 2. The court shall consider whether a party has committed
174 an act of exploitation as defined in s. 415.102(8) or s.

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175 825.103(1) or domestic violence as defined in s. 741.28 against
176 another party or any member of another party's family; engaged
177 in a pattern of behaviors that exert power and control over
178 another party and that may compromise another party's ability to
179 negotiate a fair result; or engaged in behavior that leads
180 another party to have reasonable cause to believe that he or she
181 is in imminent danger of becoming a victim of domestic violence.
182 The court shall consider and evaluate all relevant factors,
183 including, but not limited to, the factors specified in s.
184 741.30(6)(b).

185 3. If a party has a history of domestic violence or
186 exploitation of an elderly person, the court must order
187 safeguards to protect the safety of the participants and the
188 elder and the elder's property, including, but not limited to,
189 adherence to all provisions of an injunction for protection or
190 conditions of bail, probation, or a sentence arising from
191 criminal proceedings.

192 (4) COURT APPOINTMENT.—A court appointment of an
193 eldercaring coordinator is for a term of up to 2 years and the
194 court shall conduct review hearings intermittently to determine
195 whether the term should be concluded or extended. Appointments
196 conclude upon expiration of the term or upon discharge by the
197 court, whichever occurs earlier.

198 (5) QUALIFICATIONS FOR ELDERCARE COORDINATORS.—

199 (a) The court shall appoint qualified eldercaring
200 coordinators who meet the requirements of each of the following:

201 1. Meet one of the following professional requirements:

202 a. Be licensed as a mental health professional under
203 chapter 491 and hold at least a master's degree in the

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204 professional field of practice;
205 b. Be licensed as a psychologist under chapter 490;
206 c. Be licensed as a physician under chapter 458;
207 d. Be licensed as a nurse under chapter 464 and hold at
208 least a master's degree;
209 e. Be certified by the Florida Supreme Court as a family
210 mediator and hold at least a master's degree;
211 f. Be a member in good standing of The Florida Bar; or
212 g. Be a professional guardian as defined in s. 744.102(17)
213 and hold at least a master's degree.
214 2. Complete all of the following:
215 a. Three years of post-licensure or post-certification
216 practice;
217 b. A family mediation training program certified by the
218 Florida Supreme Court;
219 c. An elder mediation training program that meets standards
220 approved and adopted by the Florida Supreme Court. If the
221 Florida Supreme Court has not yet adopted such standards, the
222 standards for elder mediation training approved and adopted by
223 the Association for Conflict Resolution apply; and
224 d. Eldercaring coordinator training. The training must
225 total at least 28 hours and must include eldercaring
226 coordination; elder, guardianship, and incapacity law and
227 procedures and less restrictive alternatives to guardianship as
228 it pertains to eldercaring coordination; at least 4 hours on the
229 implications of elder abuse, neglect, and exploitation and other
230 safety issues in eldercaring coordination; the elder's role
231 within eldercaring coordination; family dynamics related to
232 eldercaring coordination; eldercaring coordination skills and

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233 techniques; multicultural competence and its use in eldercaring
234 coordination; at least 2 hours of ethical considerations
235 pertaining to eldercaring coordination; use of technology within
236 eldercaring coordination; and court-specific eldercaring
237 coordination procedures.

238 3. Successfully pass a Level 2 background screening as
239 provided in s. 435.04(2) and (3) or be exempt from
240 disqualification under s. 435.07.

241 4. Have not been a respondent in a final order granting an
242 injunction for protection against domestic, dating, sexual, or
243 repeat violence or stalking or exploitation of an elder or a
244 disabled person.

245 5. Meet any additional qualifications the court may require
246 to address issues specific to the parties.

247 (b) A qualified eldercaring coordinator must be in good
248 standing or in clear and active status with all professional
249 licensing authorities or certification boards.

250 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
251 COORDINATORS.—

252 (a) An eldercaring coordinator must resign and immediately
253 report to the court if he or she no longer meets the minimum
254 qualifications or if any of the disqualifying circumstances
255 occurs.

256 (b) The court shall remove an eldercaring coordinator upon
257 the eldercaring coordinator's resignation or disqualification or
258 a finding of good cause shown based on the court's own motion or
259 a party's motion.

260 (c) Upon the court's own motion or upon a party's motion,
261 the court may suspend the authority of an eldercaring

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262 coordinator pending a hearing on the motion for removal. Notice
263 of hearing on removal must be timely served on the eldercaring
264 coordinator and all parties.

265 (d) If a motion was made in bad faith, a court may, in
266 addition to any other remedy authorized by law, award reasonable
267 attorney fees and costs to a party or an eldercaring coordinator
268 who successfully challenges a motion for removal.

269 (7) SUCCESSOR ELDERCARING COORDINATOR.—If an eldercaring
270 coordinator resigns, is removed, or is suspended from an
271 appointment, the court shall appoint a successor qualified
272 eldercaring coordinator who is agreed to by all parties or, if
273 the parties do not reach agreement on a successor, another
274 qualified eldercaring coordinator to serve for the remainder of
275 the original term.

276 (8) FEES AND COSTS.—The court may not order the parties to
277 eldercaring coordination without their consent unless the court
278 determines that the parties have the financial ability to pay
279 the eldercaring coordination fees and costs. The court shall
280 determine the allocation among the parties of fees and costs for
281 eldercaring coordination and may make an unequal allocation
282 based on the financial circumstances of each party, including
283 the elder.

284 (a) A party who is asserting that he or she is unable to
285 pay the eldercaring coordination fees and costs must complete a
286 financial affidavit form approved by the presiding court. The
287 court shall consider the party's financial circumstances,
288 including income; assets; liabilities; financial obligations;
289 and resources, including, but not limited to, whether the party
290 can receive or is receiving trust benefits, whether the party is

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291 represented by and paying a lawyer, and whether paying the fees
292 and costs of eldercaring coordination would create a substantial
293 hardship.

294 (b) If a court finds that a party is indigent based upon
295 the criteria prescribed in s. 57.082, the court may not order
296 the party to eldercaring coordination unless funds are available
297 to pay the indigent party's allocated portion of the eldercaring
298 coordination fees and costs, which may include funds provided
299 for that purpose by one or more nonindigent parties who consent
300 to paying such fees and costs, or unless insurance coverage or
301 reduced or pro bono services are available to pay all or a
302 portion of such fees and costs. If financial assistance, such as
303 health insurance or eldercaring coordination grants, is
304 available, such assistance must be taken into consideration by
305 the court in determining the financial abilities of the parties.

306 (9) CONFIDENTIALITY.—

307 (a) Except as otherwise provided in this section, all
308 communications made by, between, or among any parties,
309 participants, or eldercaring coordinator during eldercaring
310 coordination shall be kept confidential.

311 (b) The eldercaring coordinator, participants, and each
312 party designated in the order appointing the eldercaring
313 coordinator may not testify or otherwise offer evidence about
314 communications made by, between, or among the parties,
315 participants, and the eldercaring coordinator during eldercaring
316 coordination, unless one of the following applies:

317 1. Such communications are necessary to identify,
318 authenticate, confirm, or deny a written and signed agreement
319 entered into by the parties during eldercaring coordination.

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320 2. Such communications are necessary to identify an issue
321 for resolution by the court without otherwise disclosing
322 communications made by any party or the eldercaring coordinator.

323 3. Such communications are limited to the subject of a
324 party's compliance with the order of referral to eldercaring
325 coordination, orders for psychological evaluation, court orders
326 or health care provider recommendations for counseling, or court
327 orders for substance abuse testing or treatment.

328 4. The communications are necessary to determine the
329 qualifications of an eldercaring coordinator or to determine the
330 immunity and liability of an eldercaring coordinator who has
331 acted in bad faith or with malicious purpose or in a manner
332 exhibiting wanton and willful disregard for the rights, safety,
333 or property of the parties pursuant to subsection (11).

334 5. The parties agree that the communications be disclosed.

335 6. The communications are necessary to protect any person
336 from future acts that would constitute domestic violence under
337 chapter 741; child abuse, neglect, or abandonment under chapter
338 39; or abuse, neglect, or exploitation of an elderly or disabled
339 adult under chapter 415 or chapter 825, or are necessary in an
340 investigation conducted under s. 744.2004 or a review conducted
341 under s. 744.368(5).

342 7. The communications are offered to report, prove, or
343 disprove professional misconduct alleged to have occurred during
344 eldercaring coordination, solely for the internal use of the
345 body conducting the investigation of such misconduct.

346 8. The communications are offered to report, prove, or
347 disprove professional malpractice alleged to have occurred
348 during eldercaring coordination, solely for the professional

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349 malpractice proceeding.

350 9. The communications were willfully used to plan a crime,
351 commit or attempt to commit a crime, conceal ongoing criminal
352 activity, or threaten violence.

353 (c) Notwithstanding paragraphs (a) and (b), confidentiality
354 or privilege does not attach to a signed written agreement
355 reached during eldercaring coordination, unless the parties
356 agree otherwise, or to any eldercaring coordination
357 communication:

358 1. For which the confidentiality or privilege against
359 disclosure has been waived by all parties;

360 2. That is willfully used to plan a crime, commit or
361 attempt to commit a crime, conceal ongoing criminal activity, or
362 threaten violence; or

363 3. That requires a mandatory report pursuant to chapter 39
364 or chapter 415 solely for the purpose of making the mandatory
365 report to the entity requiring the report.

366 (10) EMERGENCY REPORTING TO THE COURT.—

367 (a) An eldercaring coordinator must immediately inform the
368 court by affidavit or verified report, without notice to the
369 parties, if:

370 1. The eldercaring coordinator has or will be making a
371 report pursuant to chapter 39 or chapter 415; or

372 2. A party, including someone acting on a party's behalf,
373 is threatening or is believed to be planning to commit the
374 offense of kidnapping upon an elder as defined in s. 787.01, or
375 wrongfully removes or is removing the elder from the
376 jurisdiction of the court without prior court approval or
377 compliance with the requirements of s. 744.1098. If the

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378 eldercaring coordinator suspects that a party or family member
379 has relocated an elder within this state to protect the elder
380 from a domestic violence situation, the eldercaring coordinator
381 may not disclose the location of the elder unless required by
382 court order.

383 (b) An eldercaring coordinator shall immediately inform the
384 court by affidavit or verified report and serve a copy of such
385 affidavit or report on each party upon learning that a party is
386 the subject of a final order or injunction of protection against
387 domestic violence or exploitation of an elderly person or has
388 been arrested for an act of domestic violence or exploitation of
389 an elderly person.

390 (11) IMMUNITY AND LIMITATION ON LIABILITY.-

391 (a) A person who is appointed or employed to assist the
392 body designated to perform duties relating to disciplinary
393 proceedings involving eldercaring coordinators has absolute
394 immunity from liability arising from the performance of his or
395 her duties while acting within the scope of his or her appointed
396 functions or duties of employment.

397 (b) An eldercaring coordinator who is appointed by the
398 court is not liable for civil damages for any act or omission
399 within the scope of his or her duties under an order of referral
400 unless such person acted in bad faith or with malicious purpose
401 or in a manner exhibiting wanton and willful disregard for the
402 rights, safety, or property of the parties.

403 (12) MINIMUM STANDARDS AND PROCEDURES.-The Florida Supreme
404 Court shall establish minimum standards and procedures for the
405 qualification, ethical conduct, discipline, and training and
406 education of eldercaring coordinators who serve under this

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407 section. The Florida Supreme Court may appoint or employ such
408 personnel as are necessary to assist the court in exercising its
409 powers and performing its duties under this section.

410 Section 2. This act shall take effect July 1, 2021.