

By the Committee on Judiciary; and 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; requiring the applicant to  
16      meet certain qualifications for background screening,  
17      unless otherwise exempt; requiring prospective  
18      eldercaring coordinators to submit fingerprints for  
19      purposes of criminal history background screening;  
20      providing for the payment and cost of fingerprint  
21      processing; providing for the removal and suspension  
22      of authority of certain eldercaring coordinators;  
23      requiring that notice of hearing on removal of a  
24      coordinator be timely served; authorizing the courts  
25      to award certain fees and costs under certain  
26      circumstances; requiring the court to appoint  
27      successor eldercaring coordinators under certain  
28      circumstances; authorizing the courts to make certain  
29      determinations based on the fees and costs of

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30 eldercaring coordination; providing that certain  
31 communications between the parties, participants, and  
32 eldercaring coordinators are confidential; providing  
33 exceptions to confidentiality; providing requirements  
34 for emergency reporting to courts under certain  
35 circumstances; providing immunity from liability for  
36 eldercaring coordinators under specified  
37 circumstances; requiring the Florida Supreme Court to  
38 establish certain minimum standards and procedures for  
39 eldercaring coordinators; providing an effective date.

40  
41 Be It Enacted by the Legislature of the State of Florida:

42  
43 Section 1. Section 44.407, Florida Statutes, is created to  
44 read:

45 44.407 Elder-focused dispute resolution process.-

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

47 (a) Denying an elder a voice in decisions regarding himself  
48 or herself may negatively affect the elder's health and well-  
49 being, as well as deprive the elder of his or her legal rights.  
50 Even if an elder is losing capacity to make major decisions for  
51 himself or herself, the elder is still entitled to the dignity  
52 of having his or her voice heard.

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

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59 (c) By recognizing that every elder, including those whose  
60 capacity is being questioned, has unique needs, interests, and  
61 differing abilities, the Legislature intends for this section to  
62 promote the public welfare by establishing a unique dispute  
63 resolution option to complement and enhance, not replace, other  
64 services, such as the provision of legal information or legal  
65 representation; financial advice; individual or family therapy;  
66 medical, psychological, or psychiatric evaluation; or mediation,  
67 specifically for issues related to the care and needs of elders.  
68 The Legislature intends that this section be liberally construed  
69 to accomplish these goals.

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

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

73 1. Determine if someone is or is not incapacitated pursuant  
74 to s. 744.331.

75 2. Appoint or remove a guardian.

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

77 4. Audit an annual guardianship report.

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

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

80 7. Enter an injunction for the protection of an elder under  
81 s. 825.1035.

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

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

86 10. At the discretion of the presiding judge, address other  
87 matters pending before the court which involve the care or

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88 safety of an elder or the security of an elder's property.

89 (b) "Elder" means a person 60 years of age or older who is  
90 alleged to be suffering from the infirmities of aging as  
91 manifested by a physical, a mental, or an emotional dysfunction  
92 to the extent that the elder's ability to provide adequately for  
93 the protection or care of his or her own person or property is  
94 impaired.

95 (c) "Eldercaring coordination" means an elder-focused  
96 dispute resolution process during which an eldercaring  
97 coordinator assists an elder, legally authorized decisionmakers,  
98 and others who participate by court order or by invitation of  
99 the eldercaring coordinator, in resolving disputes regarding the  
100 care and safety of an elder by:

101 1. Facilitating more effective communication and  
102 negotiation and the development of problem-solving skills.

103 2. Providing education about eldercare resources.

104 3. Facilitating the creation, modification, or  
105 implementation of an eldercaring plan and reassessing it as  
106 necessary to reach a resolution of ongoing disputes concerning  
107 the care and safety of the elder.

108 4. Making recommendations for the resolution of disputes  
109 concerning the care and safety of the elder.

110 5. With the prior approval of the parties to an action or  
111 of the court, making limited decisions within the scope of the  
112 court's order of referral.

113 (d) "Eldercaring coordination communication" means an oral  
114 or a written statement or nonverbal conduct intended to make an  
115 assertion by or to an eldercaring coordinator or individuals  
116 involved in eldercaring coordination made during an eldercaring

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117 coordination activity, or before the activity if made in  
118 furtherance of eldercaring coordination. The term does not  
119 include statements made during eldercaring coordination which  
120 involve the commission of a crime, the intent to commit a crime,  
121 or ongoing abuse, exploitation, or neglect of a child or  
122 vulnerable adult.

123 (e) "Eldercaring coordinator" means an impartial third  
124 person who is appointed by the court or designated by the  
125 parties and who meets the requirements of subsection (5). The  
126 role of the eldercaring coordinator is to assist parties through  
127 eldercaring coordination in a manner that respects the elder's  
128 need for autonomy and safety.

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

136 (g) "Good cause" means a finding that the eldercaring  
137 coordinator:

138 1. Is not fulfilling the duties and obligations of the  
139 position;

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

142 3. Has conflicting or adverse interests that affect his or  
143 her impartiality;

144 4. Has engaged in circumstances that compromise the  
145 integrity of eldercaring coordination; or

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146 5. Has had a disqualifying event occur.

147  
148 The term does not include a party's disagreement with the  
149 eldercaring coordinator's methods or procedures.

150 (h) "Legally authorized decisionmaker" means an individual  
151 designated, either by the elder or by the court, pursuant to  
152 chapter 709, chapter 744, chapter 747, or chapter 765 who has  
153 the authority to make specific decisions on behalf of the elder  
154 who is the subject of an action.

155 (i) "Participant" means an individual who joins eldercaring  
156 coordination by invitation of or with the consent of the  
157 eldercaring coordinator but who has not filed a pleading in the  
158 action from which the case was referred to eldercaring  
159 coordination.

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

163 (3) REFERRAL.—

164 (a) Upon agreement of the parties to the action, the  
165 court's own motion, or the motion of a party to the action, the  
166 court may appoint an eldercaring coordinator and refer the  
167 parties to eldercaring coordination to assist in the resolution  
168 of disputes concerning the care and safety of the elder who is  
169 the subject of an action.

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

174 1. The court shall offer each party an opportunity to

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175 consult with an attorney or a domestic violence advocate before  
176 accepting consent to such referral. The court shall determine  
177 whether each party has given his or her consent freely and  
178 voluntarily.

179 2. The court shall consider whether a party has committed  
180 an act of exploitation as defined in s. 415.102(8) or s.  
181 825.103(1) or domestic violence as defined in s. 741.28 against  
182 another party or any member of another party's family; engaged  
183 in a pattern of behaviors that exert power and control over  
184 another party and that may compromise another party's ability to  
185 negotiate a fair result; or engaged in behavior that leads  
186 another party to have reasonable cause to believe that he or she  
187 is in imminent danger of becoming a victim of domestic violence.  
188 The court shall consider and evaluate all relevant factors,  
189 including, but not limited to, the factors specified in s.  
190 741.30(6)(b).

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

198 (4) COURT APPOINTMENT.—A court appointment of an  
199 eldercaring coordinator is for a term of up to 2 years and the  
200 court shall conduct review hearings intermittently to determine  
201 whether the term should be concluded or extended. Appointments  
202 conclude upon expiration of the term or upon discharge by the  
203 court, whichever occurs earlier.

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204 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

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

207 1. Meet one of the following professional requirements:

208 a. Be licensed as a mental health professional under  
209 chapter 491 and hold at least a master's degree in the  
210 professional field of practice;

211 b. Be licensed as a psychologist under chapter 490;

212 c. Be licensed as a physician under chapter 458 or chapter  
213 459;

214 d. Be licensed as a nurse under chapter 464 and hold at  
215 least a master's degree;

216 e. Be certified by the Florida Supreme Court as a family  
217 mediator and hold at least a master's degree;

218 f. Be a member in good standing of The Florida Bar; or

219 g. Be a professional guardian as defined in s. 744.102(17)  
220 and hold at least a master's degree.

221 2. Complete all of the following:

222 a. Three years of post-licensure or post-certification  
223 practice;

224 b. A family mediation training program certified by the  
225 Florida Supreme Court;

226 c. An elder mediation training program that meets standards  
227 approved and adopted by the Florida Supreme Court. If the  
228 Florida Supreme Court has not yet adopted such standards, the  
229 standards for elder mediation training approved and adopted by  
230 the Association for Conflict Resolution apply; and

231 d. Eldercaring coordinator training. The training must  
232 total at least 28 hours and must include eldercaring



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233 coordination; elder, guardianship, and incapacity law and  
234 procedures and less restrictive alternatives to guardianship as  
235 it pertains to eldercaring coordination; at least 4 hours on the  
236 implications of elder abuse, neglect, and exploitation and other  
237 safety issues in eldercaring coordination; the elder's role  
238 within eldercaring coordination; family dynamics related to  
239 eldercaring coordination; eldercaring coordination skills and  
240 techniques; multicultural competence and its use in eldercaring  
241 coordination; at least 2 hours of ethical considerations  
242 pertaining to eldercaring coordination; use of technology within  
243 eldercaring coordination; and court-specific eldercaring  
244 coordination procedures.

245 3. Successfully pass a level 2 background screening as set  
246 forth in s. 435.04(2) and (3) or be exempt from disqualification  
247 under s. 435.07. The prospective eldercaring coordinator must  
248 submit a full set of fingerprints to the court or to a vendor,  
249 entity, or agency authorized by s. 943.053(13). The court,  
250 vendor, entity, or agency shall forward the fingerprints to the  
251 Department of Law Enforcement for state processing and the  
252 Department of Law Enforcement shall forward the fingerprints to  
253 the Federal Bureau of Investigation for national processing. The  
254 prospective eldercaring coordinator shall pay the fees for state  
255 and federal fingerprint processing. The state cost for  
256 fingerprint processing shall be as provided in s. 943.053(3)(e)  
257 for records provided to persons or entities other than those  
258 specified as exceptions therein.

259 4. Have not been a respondent in a final order granting an  
260 injunction for protection against domestic, dating, sexual, or  
261 repeat violence or stalking or exploitation of an elder or a

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262 disabled person.

263 5. Meet any additional qualifications the court may require  
264 to address issues specific to the parties.

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

268 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING  
269 COORDINATORS.—

270 (a) An eldercaring coordinator must resign and immediately  
271 report to the court if he or she no longer meets the minimum  
272 qualifications or if any of the disqualifying circumstances  
273 occurs.

274 (b) The court shall remove an eldercaring coordinator upon  
275 the eldercaring coordinator's resignation or disqualification or  
276 a finding of good cause shown based on the court's own motion or  
277 a party's motion.

278 (c) Upon the court's own motion or upon a party's motion,  
279 the court may suspend the authority of an eldercaring  
280 coordinator pending a hearing on the motion for removal. Notice  
281 of hearing on removal must be timely served on the eldercaring  
282 coordinator and all parties.

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

287 (7) SUCCESSOR ELDERCARING COORDINATOR.—If an eldercaring  
288 coordinator resigns, is removed, or is suspended from an  
289 appointment, the court shall appoint a successor qualified  
290 eldercaring coordinator who is agreed to by all parties or, if

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291 the parties do not reach agreement on a successor, another  
292 qualified eldercaring coordinator to serve for the remainder of  
293 the original term.

294 (8) FEES AND COSTS.—The court may not order the parties to  
295 eldercaring coordination without their consent unless the court  
296 determines that the parties have the financial ability to pay  
297 the eldercaring coordination fees and costs. The court shall  
298 determine the allocation among the parties of fees and costs for  
299 eldercaring coordination and may make an unequal allocation  
300 based on the financial circumstances of each party, including  
301 the elder.

302 (a) A party who is asserting that he or she is unable to  
303 pay the eldercaring coordination fees and costs must complete a  
304 financial affidavit form approved by the presiding court. The  
305 court shall consider the party's financial circumstances,  
306 including income; assets; liabilities; financial obligations;  
307 and resources, including, but not limited to, whether the party  
308 can receive or is receiving trust benefits, whether the party is  
309 represented by and paying a lawyer, and whether paying the fees  
310 and costs of eldercaring coordination would create a substantial  
311 hardship.

312 (b) If a court finds that a party is indigent based upon  
313 the criteria prescribed in s. 57.082, the court may not order  
314 the party to eldercaring coordination unless funds are available  
315 to pay the indigent party's allocated portion of the eldercaring  
316 coordination fees and costs, which may include funds provided  
317 for that purpose by one or more nonindigent parties who consent  
318 to paying such fees and costs, or unless insurance coverage or  
319 reduced or pro bono services are available to pay all or a

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320 portion of such fees and costs. If financial assistance, such as  
321 health insurance or eldercaring coordination grants, is  
322 available, such assistance must be taken into consideration by  
323 the court in determining the financial abilities of the parties.

324 (9) CONFIDENTIALITY.—

325 (a) Except as otherwise provided in this section, all  
326 communications made by, between, or among any parties,  
327 participants, or eldercaring coordinator during eldercaring  
328 coordination shall be kept confidential.

329 (b) The eldercaring coordinator, participants, and each  
330 party designated in the order appointing the eldercaring  
331 coordinator may not testify or otherwise offer evidence about  
332 communications made by, between, or among the parties,  
333 participants, and the eldercaring coordinator during eldercaring  
334 coordination, unless one of the following applies:

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

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

341 3. Such communications are limited to the subject of a  
342 party's compliance with the order of referral to eldercaring  
343 coordination, orders for psychological evaluation, court orders  
344 or health care provider recommendations for counseling, or court  
345 orders for substance abuse testing or treatment.

346 4. The communications are necessary to determine the  
347 qualifications of an eldercaring coordinator or to determine the  
348 immunity and liability of an eldercaring coordinator who has

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349 acted in bad faith or with malicious purpose or in a manner  
350 exhibiting wanton and willful disregard for the rights, safety,  
351 or property of the parties pursuant to subsection (11).

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

353 6. The communications are necessary to protect any person  
354 from future acts that would constitute domestic violence under  
355 chapter 741; child abuse, neglect, or abandonment under chapter  
356 39; or abuse, neglect, or exploitation of an elderly or disabled  
357 adult under chapter 415 or chapter 825, or are necessary in an  
358 investigation conducted under s. 744.2004 or a review conducted  
359 under s. 744.368(5).

360 7. The communications are offered to report, prove, or  
361 disprove professional misconduct alleged to have occurred during  
362 eldercaring coordination, solely for the internal use of the  
363 body conducting the investigation of such misconduct.

364 8. The communications are offered to report, prove, or  
365 disprove professional malpractice alleged to have occurred  
366 during eldercaring coordination, solely for the professional  
367 malpractice proceeding.

368 9. The communications were willfully used to plan a crime,  
369 commit or attempt to commit a crime, conceal ongoing criminal  
370 activity, or threaten violence.

371 (c) Notwithstanding paragraphs (a) and (b), confidentiality  
372 or privilege does not attach to a signed written agreement  
373 reached during eldercaring coordination, unless the parties  
374 agree otherwise, or to any eldercaring coordination  
375 communication:

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

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378 2. That is willfully used to plan a crime, commit or  
379 attempt to commit a crime, conceal ongoing criminal activity, or  
380 threaten violence; or

381 3. That requires a mandatory report pursuant to chapter 39  
382 or chapter 415 solely for the purpose of making the mandatory  
383 report to the entity requiring the report.

384 (10) EMERGENCY REPORTING TO THE COURT.-

385 (a) An eldercaring coordinator must immediately inform the  
386 court by affidavit or verified report, without notice to the  
387 parties, if:

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

390 2. A party, including someone acting on a party's behalf,  
391 is threatening or is believed to be planning to commit the  
392 offense of kidnapping upon an elder as defined in s. 787.01, or  
393 wrongfully removes or is removing the elder from the  
394 jurisdiction of the court without prior court approval or  
395 compliance with the requirements of s. 744.1098. If the  
396 eldercaring coordinator suspects that a party or family member  
397 has relocated an elder within this state to protect the elder  
398 from a domestic violence situation, the eldercaring coordinator  
399 may not disclose the location of the elder unless required by  
400 court order.

401 (b) An eldercaring coordinator shall immediately inform the  
402 court by affidavit or verified report and serve a copy of such  
403 affidavit or report on each party upon learning that a party is  
404 the subject of a final order or injunction of protection against  
405 domestic violence or exploitation of an elderly person or has  
406 been arrested for an act of domestic violence or exploitation of

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407 an elderly person.

408 (11) IMMUNITY AND LIMITATION ON LIABILITY.-

409 (a) A person who is appointed or employed to assist the  
410 body designated to perform duties relating to disciplinary  
411 proceedings involving eldercaring coordinators has absolute  
412 immunity from liability arising from the performance of his or  
413 her duties while acting within the scope of his or her appointed  
414 functions or duties of employment.

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

421 (12) MINIMUM STANDARDS AND PROCEDURES.-The Florida Supreme  
422 Court shall establish minimum standards and procedures for the  
423 qualification, ethical conduct, discipline, and training and  
424 education of eldercaring coordinators who serve under this  
425 section. The Florida Supreme Court may appoint or employ such  
426 personnel as are necessary to assist the court in exercising its  
427 powers and performing its duties under this section.

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