

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 1396

INTRODUCER: Senator Garcia

SUBJECT: Department of Elderly Affairs

DATE: March 17, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1396 makes several changes to certain programs operated within the Department of Elder Affairs (DOEA). Specifically, the bill:

- Permits Long-Term Care Ombudsman Program staff employed in the state office of the Program to become certified as ombudsmen.
- Deletes obsolete language relating to the DOEA joining the Background Screening Clearinghouse within the Agency for Health Care Administration (the AHCA), and includes certain persons within the definition of ‘direct service provider’ who require a level 2 background screening.
- Revises the duties of the executive director of the Office of Public and Professional Guardianship (the OPPG) to include offering and making certain information about alternatives to and types of guardianship available for dissemination by the Area Agencies on Aging and Aging Resource Centers throughout the state.
- Increases the continuing education requirements of professional guardians and specifies the number of continuing education hours required for certain topics.
- Reorganizes language for clarity and requires the OPPG to notify complainants no later than 10 business days after the OPPG determines that a complaint is not legally sufficient.
- Revises the number of days within which the OPPG must complete and provide any initial investigative findings and recommendations to both the guardian and the complainant from 60 to 45 days.
- Requires the OPPG to provide both the guardian and the complainant 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 within 10 business days after completing an investigation.
- Requires the Clerks of the Circuit Court (Clerks) to report sanctions imposed by the court on a professional guardian to the OPPG within a specified time frame.

The bill may have a negative fiscal impact on the DOEA. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

## II. Present Situation:

### Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program (the Program) to be eligible to receive funding associated with programs under the OAA.<sup>1</sup> The Program was founded in 1975 as a result of the OAA, which grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities (ALFs), and adult family care homes.<sup>2</sup> Volunteer ombudsmen seek to ensure the health, safety, welfare and rights of these residents throughout Florida.

The Program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.<sup>3</sup> The Program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes.<sup>4</sup> Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.<sup>5</sup> In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.<sup>6</sup>

The State Ombudsman carries out his or her responsibilities under Florida and federal law through the training and certification of volunteers who operate through district and local councils, and through staff positions in the state and district offices established to coordinate and assist the local councils.<sup>7</sup>

Federal regulations provide that the State Ombudsman may designate employees or volunteers within the Program office to carry out the duties of the office as “representatives of the office,” subject to the training and certification requirements for representatives of the office.<sup>8</sup> However, Florida law specifies certain categories of individuals who may not be appointed as ombudsmen, including, in part, “An employee of the [DOEA], except for staff certified as ombudsmen in the

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<sup>1</sup> See s. 400.0061(1), F.S.; see also the Office of Program Policy Analysis and Governmental Accountability, *Department of Elder Affairs, Older Americans Act Programs*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5026> (last visited March 16, 2023).

<sup>2</sup> The Florida Ombudsman Program, *About Us*, available at <https://ombudsman.elderaffairs.org/about-us/> (last visited March 13, 2023).

<sup>3</sup> Section 400.0063(2), F.S.

<sup>4</sup> Section 400.0078(1), F.S.

<sup>5</sup> Section 400.0078(2), F.S.

<sup>6</sup> See s. 400.0074, F.S.

<sup>7</sup> The Department of Elder Affairs (the DOEA), *Agency Analysis of SB 1396*, p. 2, February 11, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The DOEA Analysis”).

<sup>8</sup> *Id.*

district offices.”<sup>9</sup> “Offices” in this context refers to the district offices of the State Long-Term Care Ombudsman Program.<sup>10</sup> Read together, these provisions exempt staff in the Program’s district offices from the general prohibition against appointment of DOEA employees as ombudsmen, but they do not permit staff in the Program’s state office to be appointed as ombudsmen.<sup>11</sup>

### **Background Screening**

Chapter 435, F.S., establishes standard procedures for criminal history background screening of certain prospective employees working with vulnerable populations. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>12</sup> and may include criminal records checks through local law enforcement agencies.<sup>13</sup>

Level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>14</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>15</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>16</sup>

For both level 1 and 2 screenings, an employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>17</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>18</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>19</sup> For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>20</sup>

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<sup>9</sup> See s. 400.0069(4)(b)4., F.S.

<sup>10</sup> The DOEA Analysis at p. 2; see also s. 400.0060(7), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited March 13, 2023).

<sup>13</sup> Section 435.03, F.S.

<sup>14</sup> Section 435.04, F.S.

<sup>15</sup> Section 435.05(1)(a), F.S.

<sup>16</sup> Sections 435.03(1) and 435.04(1)(a), F.S.

<sup>17</sup> Section 435.05(1)(b)-(c), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 435.05(1)(b), F.S.

<sup>20</sup> Section 435.05(1)(c), F.S.

The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>21</sup>

Various agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with entities who serve vulnerable populations are subject to background screening; however, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting.<sup>22</sup> In 2012, the Legislature created the Care Provider Background Screening Clearinghouse to create a single “program” of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.<sup>23</sup> Designated agencies include the Agency for Health Care Administration (the AHCA), the Department of Health (the DOH), the Department of Children and Families (the DCF), the DOEA, the Agency for Persons with Disabilities (the APD), and Vocational Rehabilitation within the Department of Education (the DOE).<sup>24</sup>

### ***Direct Service Providers***

Direct service providers are individuals who have direct, face-to-face contact with clients served by the DOEA while providing services to the client and who have access to the client’s living areas, funds, personal property, or person identification information as defined in s. 817.568, F.S.<sup>25, 26</sup> Direct service providers must undergo a level 2 background screening, including employment history checks and local criminal records checks through local law enforcement agencies.<sup>27</sup>

However, current law provides that attorneys in good standing with the Florida Bar are exempt from background screening requirements if they are a direct service provider.<sup>28</sup> While the Florida Bar requires background screening for when an individual applies for their bar license, the Florida Bar does not have an automatic notification system for any subsequent arrests.<sup>29</sup> The

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<sup>21</sup> Section 435.05(1)(d), F.S.

<sup>22</sup> The DOEA Analysis at p. 3.

<sup>23</sup> *Id.*; see also s. 435.12, F.S. and ch. 2012-73, L.O.F.

<sup>24</sup> *Id.*

<sup>25</sup> Section 430.0402(1)(b), F.S. The individual must be 18 years of age or older.

<sup>26</sup> Section 817.568, F.S., defines “personal identification information” to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any: 1. name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2. unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3. unique electronic identification number, address, or routing code; 4. Medical records; 5. Telecommunication identifying information or access device; or 6. Other number or information that can be used to access a person’s financial resources.

<sup>27</sup> Section 430.0402(1)(a), F.S.

<sup>28</sup> Section 430.0402(2), F.S.

<sup>29</sup> The DOEA Analysis at p. 3.

Florida Bar only requires attorneys to self-report when arrested; therefore, an attorney may be in good standing, but have an arrest or conviction that has not been reported to the Florida Bar.<sup>30</sup>

### Aging and Disability Resource Centers

The DOEA administers programs and services for elders across the state of Florida through 11 Area Agencies on Aging, which operate as Aging and Disability Resource Centers (ADRCs).<sup>31</sup> These ADRCs function as a single, coordinated system for information and access to services for all Floridians seeking long-term care resources.<sup>32</sup> The ADRCs provide information and assistance about state and federal benefits, as well as available local programs and services.<sup>33</sup> The primary functions of the ADRCs include providing information and referral services, ensuring that eligibility determinations are done properly and efficiently, triaging clients who require assistance, and managing the availability of financial resources for certain key long-term care programs targeted for elders to ensure financial viability and stability.<sup>34</sup>

Florida’s 11 ADRCs are distributed throughout the state as shown in the map below:<sup>35</sup>



<sup>30</sup> *Id.*

<sup>31</sup> The DOEA, *Aging and Disability Resource Centers (ADRCs)*, available at <https://elderaffairs.org/resource-directory/aging-and-disability-resource-centers-adrcs/> (last visited March 13, 2023).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

## **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.<sup>36</sup> Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> Once a person has been adjudicated incapacitated, termed a "ward", the court appoints a guardian and the letters of guardianship are issued.<sup>40</sup> 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.<sup>41</sup>

### ***Public and 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.<sup>42</sup> A public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>43</sup>

### ***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 DOEA.<sup>44</sup> In 2016, the Legislature renamed the Statewide Public Guardianship Office as the Office of Public and Professional Guardians (OPPG), required the OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and investigators.<sup>45</sup> 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.<sup>46</sup>

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<sup>36</sup> Section 744.102(9), F.S.

<sup>37</sup> Section 744.1012(1), F.S.

<sup>38</sup> Section 744.1012(2), F.S.

<sup>39</sup> Section 744.3201, F.S.

<sup>40</sup> See s. 744.345, F.S.

<sup>41</sup> Section 744.2005, F.S.

<sup>42</sup> Section 744.102(17), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Chapter 99-277, L.O.F.

<sup>45</sup> Chapter 2016-40, L.O.F.

<sup>46</sup> The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited March 13, 2023).

There are 16 public guardian offices that serve all 67 counties.<sup>47</sup> Since 2016, approximately 550 professional guardians have registered with the OPPG statewide.<sup>48</sup>

### **Registration**

A professional guardian must register with the OPPG annually.<sup>49</sup> As part of the registration, the professional guardian must:

- 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;<sup>50</sup>
- Successfully pass an examination approved by the DOEA 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.<sup>51, 52</sup>

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two 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.<sup>53</sup>

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.<sup>54</sup> The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.<sup>55</sup>

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.<sup>56</sup> The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.<sup>57</sup> There is also currently no statutory requirement neither for courts to report removal of guardians to the OPPG.

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Section 744.2002, F.S.

<sup>50</sup> This training may not be paid with the assets of the ward.

<sup>51</sup> Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than \$50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.

<sup>52</sup> Sections 744.2002(3) and 744.3135, F.S.

<sup>53</sup> Section 744.2003(3), F.S.

<sup>54</sup> Section 744.3135(1), F.S.

<sup>55</sup> Section 744.2002(9), F.S.

<sup>56</sup> Section 744.2002(5), F.S.

<sup>57</sup> Section 744.2004(4), F.S.

***OPPG Disciplinary Action***

Disciplinary action may be taken against a professional guardian for:

- Making a misleading, deceptive, or fraudulent representation in or related to the practice of guardianship;
- Violating any rule governing guardians or guardianship adopted by OPPG;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to a crime which relates to the practice of, or ability to practice as, a professional guardian;
- Failing to comply with the educational course requirements for professional guardians;
- Having a registration, license, or authority to practice a regulated profession revoked;
- Knowingly filing a false report or complaint with OPPG against another guardian;
- Attempting to obtain, obtaining, or renewing a registration or license to practice a profession by bribery, fraud, or a known error;
- Failing to report a violation of ch. 744, F.S., or the rules of OPPG to OPPG;
- Failing to perform a legal or statutory obligation;
- Making or filing a false report that is signed in the person's capacity as professional guardian;
- Using the position of guardian for financial gain;
- Violating or failing to comply with an order from OPPG;
- Improperly interfering with an investigation;
- Using the guardianship relationship to engage or attempt to engage in sexual activity;
- Failing to report to OPPG within 30 days being convicted or found guilty of, or enter a plea of guilty or nolo contendere to a crime;
- Being unable to perform the functions of guardian;
- Failing to post and maintain a blanket fiduciary bond;
- Failing to maintain all records relating to a guardianship for specified time; or
- Violating any provision of ch. 744, F.S., or any rules adopted thereunder.<sup>58</sup>

When the OPPG finds that a professional guardian is guilty of any of the grounds for discipline, it may take action against that guardian by entering an order imposing one or more penalties on the professional guardian.<sup>59</sup> When determining what action is appropriate against a professional guardian, prior to consideration of any mitigation or rehabilitation for the professional guardian, the OPPG must first consider what sanctions are necessary to safeguard the wards and protect the public.<sup>60</sup> The OPPG may impose any combination of the following sanctions:

- Refuse to register an applicant as a professional guardian;
- Suspend or revoke a professional guardian's registration;
- Issue a reprimand;
- Require treatment, completion of continuing education courses, or reexamination;
- Require restitution; or
- Require remedial education.<sup>61</sup>

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<sup>58</sup> Section 744.20041(1), F.S.

<sup>59</sup> Section 744.20041(2), F.S.

<sup>60</sup> Section 744.20041(3), F.S.

<sup>61</sup> Section 744.20041(2), F.S.



If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.<sup>62</sup>

### ***Guardian Complaints and Investigations***

Any person may submit a complaint against a professional guardian to the OPPG. In 2016, the Legislature expanded the responsibility and authority of the OPPG.<sup>63</sup> SB 232 required OPPG to investigate allegations of suspected wrongdoing perpetrated by public and professional guardians.<sup>64</sup> Once the OPPG receives a complaint a procedure is initiated to investigate the complaint, including that the OPPG is required to:

- Review and, if determined legally sufficient,<sup>65</sup> investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the 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.<sup>66</sup>

To achieve the statutory duty to investigate such complaints, on July 14, 2016, the OPPG entered into a memorandum of understanding (MOU) with six clerks in different regions of the state, collectively referred to as the Statewide Investigation Alliance (SIA), and have since referred many complaints of professional guardians to the SIA for investigations.<sup>67</sup> The six county clerks comprising the SIA are:

- Palm Beach County;
- Pinellas County;
- Sarasota County;
- Lee County;
- Okaloosa County; and
- Polk County.<sup>68</sup>

Investigations which find substantiated allegations of violations by professional guardians may be referred to law enforcement, the Office of the Attorney General, the Office of the State Attorney, or the Florida Bar, as appropriate.<sup>69</sup>

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<sup>62</sup> Section 744.20041(9), F.S.

<sup>63</sup> Chapter 2016-40, L.O.F., *see also* Florida Court Clerks and Comptrollers Association, *Statewide Investigative Alliance*, available at <https://flclerksia.com/> (last visited March 13, 2023) (hereinafter cited as "Clerks Association").

<sup>64</sup> Florida Court Clerks and Comptrollers Association, *Statewide Investigative Alliance*, available at <https://flclerksia.com/> (last visited March 12, 2023).

<sup>65</sup> Section 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.

<sup>66</sup> Section 744.2004, F.S.

<sup>67</sup> *Id.*

<sup>68</sup> Clerks Association. Lake County was also a part of the SIA from July 2016 through July 2018.

<sup>69</sup> *Id.*

According to the DOEA, the annual numbers of complaints filed against a guardian or involving a guardianship since 2016 are as follows:

- 183 in 2016;
- 132 in 2017;
- 56 in 2018;
- 113 in 2019;
- 169 in 2020;
- 150 in 2021; and
- 71 received through November 30, 2022.<sup>70</sup>

Further, the DOEA has stated that the average amount of time it took the SIA to complete an investigation over the period from 2021 through 2023 was approximately 8.14 months.<sup>71</sup>

### **Auditor General Report**

In August 2020, the Florida Auditor General released a report (AG Report) containing the findings of an audit conducted of the OPPG.<sup>72</sup> The AG Report detailed the following findings specifically related to the OPPG:

- Finding 1: Contrary to State law, the OPPG did not establish policies and procedures for monitoring private professional guardians, develop or implement a monitoring tool, or monitor private professional guardians for compliance with OPPG standards of practice governing the conduct of professional guardians.
- Finding 2: OPPG efforts to monitor Public Guardian Offices (PGOs) were not always adequate to ensure that:
  - OPPG records evidenced that program monitors were free from conflicts of interest, all State guardianship rules were subject to adequate monitoring.
  - Monitoring Tool responses were supported by and consistent with source documentation, and monitoring reports were appropriately reviewed and timely provided to PGOs.
- Finding 3: OPPG complaint processing controls need improvement to ensure that:
  - Complaints are referred and related investigation activities are conducted in accordance with State law, OPPG policies and procedures, other guidelines, and management expectations;
  - Investigations include all applicable complaint allegations; and
  - Guardians and complainants are timely notified of whether disciplinary actions are taken.
- Finding 4: Contrary to State law, the DOEA had not adopted rules for certain OPPG processes, including the process for investigating complaints.
- Finding 5: OPPG controls need enhancement to ensure that, prior to reimbursing Clerks of the Court for the direct costs of guardianship complaint investigations, invoiced amounts are adequately supported and agree with established rates.

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<sup>70</sup> Email from Derek Miller, former Legislative Affairs Director, the DOEA, August 26, 2021; Email from Tyler Jefferson, Legislative Affairs Director, the DOEA, February 8, 2023 (all documents on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>71</sup> Email from Tyler Jefferson, Legislative Affairs Director, the DOEA, February 2, 2023 (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>72</sup> The State of Florida Auditor General, *Operational Audit No. 2021-010: Department of Elder Affairs, Office of Public and Professional Guardians and Selected Administrative Activities* August 2020, available at [https://flauditor.gov/pages/pdf\\_files/2021-010.pdf](https://flauditor.gov/pages/pdf_files/2021-010.pdf) (last visited March 13, 2023) (hereinafter cited as “AG Report”).

- Finding 6: OPPG controls did not adequately promote the timely submittal of annual professional guardian renewal registrations or ensure that the courts responsible for appointing guardians were timely notified of lapses in guardian registration.<sup>73</sup>

### ***Finding 3: Complaint Investigations***

According to the AG Report, the OPPG and the SIA entered into a subsequent MOU in July 2018 pursuant to which the SIA was responsible for investigating all complaints against professional guardians referred by the OPPG, and the OPPG was responsible for determining whether disciplinary or administrative action against a guardian was warranted.<sup>74</sup> According to the OPPG records, during the period July 2017 through January 2019, the OPPG received 90 complaints against 57 guardians. Of the 90 complaints, the OPPG closed only 1 complaint which was initially received in December 2017.<sup>75</sup> During that same period, the OPPG closed 31 complaints received prior to July 2017 related to 23 guardians.<sup>76</sup> Additionally, during the period July 2017 through January 2019, only one complaint led to an administrative action which resulted in the revocation of the guardian's registration in March 2019.<sup>77</sup>

The 2018 MOU and the OPPG policies and procedures required the OPPG to determine whether a complaint was legally sufficient and appropriate for investigation within 3 business days of receiving the complaint.<sup>78</sup> Such complaints were to be referred to the Administrative Coordinator (AC) who was also responsible for reviewing the complaints for legal sufficiency and assigning legally sufficient guardianship complaints to the applicable Clerk for investigation.<sup>79</sup>

The Auditor General reviewed records for 20 of the 32 complaints recorded as closed in the OPPG Complaint Intake Log during the period July 2017 through January 2019 to determine whether the OPPG had established adequate complaint processing controls.<sup>80</sup> The AG Report concluded that the OPPG referred 12 of the complaints to the AC within 4 to 116 business days (an average of 64 business days) after receiving the complaints.<sup>81</sup> Additionally, the investigations for 11 of these complaints were not initiated within 10 business days of the OPPG receiving the complaint.<sup>82</sup> The investigations for the 11 complaints were initiated from 19 to 110 business days after the OPPG received the complaint.<sup>83</sup> As a result of these various delays, the Investigative Memoranda or Investigation Report, as applicable, for the 12 complaint investigations were not provided to the OPPG within 60 days of receipt of the complaint.<sup>84</sup> Specifically, the Memoranda and one Investigation Report were provided to the OPPG within 63 to 228 days (an average of 150 days) after the OPPG received the complaints.<sup>85</sup>

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<sup>73</sup> *Id.* at p. 1.

<sup>74</sup> *Id.* at p. 3.

<sup>75</sup> *Id.*

<sup>76</sup> AG Report at p. 3-4.

<sup>77</sup> *Id.* at p. 4.

<sup>78</sup> *Id.* at p. 9.

<sup>79</sup> *Id.*

<sup>80</sup> AG Report at p. 10.

<sup>81</sup> *Id.* at p. 10.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

***Finding 4: OPPG Rules***

SB 232 (2016) required the DOEA to adopt rules implementing provisions for OPPG complaint, disciplinary proceeding, and enforcement processes by October 1, 2016.<sup>86</sup> The AG Report noted that the DOEA had not, as of the time of the audit in 2020, adopted rules for:

- Investigating complaints against guardians;
- Communicating the disciplinary process to guardians and complainants; or
- Reporting determined or suspected abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline established by the DCF.<sup>87</sup>

To date, the DOEA has not promulgated rules to address the issues detailed in findings 3 and 4 of the AG Report.

**III. Effect of Proposed Changes:****Ombudsman Program Staff (Section 1)**

The bill expressly adds staff employed in the state office of the Program, in addition to staff employed in district offices, to the category of employees exempt from the prohibition against DOEA employees serving as ombudsmen. This clarifies that such state Program employees may be certified as ombudsmen and be designated as a representative of the office. Additionally, by becoming certified ombudsmen, state Program staff will gain a better understanding of the issues faced by ombudsmen around the state.

**Background Screening Requirements (Section 2)**

The bill requires any attorney, regardless of whether the attorney is licensed in Florida, to be background screened if serving as a direct service provider.

Additionally, the bill amends the definition of direct service providers to include, but not be limited to, the following additional persons:

- Administrators of persons who are responsible for the day-to-day operations of other providers or financial officers who are responsible for the financial operations of providers;<sup>88</sup> and
- Any other person who is seeking employment with a provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to:
  - Client funds;
  - Financial matters;
  - Legal matters;
  - Personal property; or
  - Living areas.

<sup>86</sup> *Id.* at p. 13; Section 744.2006

<sup>87</sup> *Id.*

<sup>88</sup> The bill provides that this includes “similarly titled persons” to the administrators and the financial officers.

The bill also deletes obsolete language relating to the DOEA joining the Clearinghouse, as the DOEA has since become a part of the Clearinghouse.

### **OPPG Related Provisions**

#### ***Information Dissemination to Certain Stakeholders (Section 3, in part)***

The bill requires the OPPG to provide information relating to alternatives to and types of 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.

#### ***OPPG Online Education Course (Sections 3, in part, and 6)***

The bill requires the executive director of the OPPG, within available resources, to offer an online education course for guardians who are not professional guardians.

The bill offers court-appointed guardians the option to complete the requisite number of hours of instruction and education needed within the first 4 months of appointment through a course offered by the OPPG under s. 744.2001, F.S. This provides an additional option for all guardians in completing required training, but may be especially useful for non-professional guardians unsure of where or how to complete the requisite training.

#### ***Continuing Education Requirements (Section 4)***

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 30 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.

#### ***Complaint Investigations by the OPPG (Section 5)***

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 review complaints and, if determined legally sufficient, initiate investigations within 10 business days of receiving a complaint. The bill also requires the OPPG to notify the complainant no later than 10 business days after the OPPG determines a complaint is not legally sufficient. Additionally, within 45 business days (rather than the current 60 business days) after receipt of a complaint, the OPPG 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. Written statements will need to adhere to the confidentiality requirements of s. 744.2111, F.S., relating to complaints against professional guardians.

The OPPG did not previously raise objections to the timelines imposed by the bill when similar provisions were included in HB 7025 (2020).<sup>89</sup>

***Responsibilities of the Clerk of the Circuit Court (Section 7)***

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.

***Rulemaking (Sections 3 and 5)***

The bill removes obsolete language from SB 232 (2016) requiring the OPPG to take certain actions by various dates in 2016. However, as mentioned above, the OPPG still has not promulgated these Rules and will need to promulgate these to be in compliance with Florida law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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<sup>89</sup> See The DOEA, *Agency Analysis of HB 7025 (2020)*, January 21, 2020 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The DOEA HB 7025 Analysis”).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The provisions of the bill that require background screening for a broader pool of individuals under the revised definition of ‘direct service provider’ may result in an indeterminate negative fiscal impact on those individuals.

**C. Government Sector Impact:**

The DOEA states that the provisions of the bill relating to certification of Program staff and background screening are not expected to have a fiscal impact on the agency.<sup>90</sup> The revised OPPG requirements may require additional staff, which may lead to an indeterminate negative fiscal impact; however the OPPG did not previously anticipate a fiscal impact for identical provisions in HB 7025 (2020).<sup>91</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 400.0069, 430.0402, 744.2001, 744.2003, 744.2004, 744.3145, and 744.368 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>90</sup> The DOEA Analysis at p. 4.

<sup>91</sup> The DOEA HB 7025 Analysis at p. 4.