



Children, Families & Seniors Subcommittee

**Tuesday, March 17, 2015
9:00 AM – 11:00 AM
12 HOB**

**Steve Crisafulli
Speaker**

**Gayle B. Harrell
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Children, Families & Seniors Subcommittee

Start Date and Time: Tuesday, March 17, 2015 09:00 am
End Date and Time: Tuesday, March 17, 2015 11:00 am
Location: 12 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 1055 Child Protection by Harrell
HB 1225 Guardianship by Ahern

Workshop on mental health and substance abuse policy options

Workshop on child welfare and child abuse death review policy options



Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Monday, March 16, 2015.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 16, 2015.

NOTICE FINALIZED on 03/13/2015 15:25 by Villar.Melissa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1055 Child Protection
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Tuszynski 	Brazzell 
2) Civil Justice Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local sheriff's offices and the Department of Children and Families (DCF) in cases of child abuse and neglect to supplement investigation activities. Child protection teams provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions to protect children.

The bill:

- Amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection and district CPT medical directors to hold certain licenses and certifications.
- Adds "a member of a child protection team, as defined in s. 39.01, when carrying out his or her duties as a team member" to the definition of "Officer, employee, or agent" for the purposes of sovereign immunity.
- Requires the inclusion of the local child protection team medical director on any Critical Incident Rapid Response Team initiated by DCF to conduct investigations of certain child deaths or other serious incidents.
- Removes the ability for a physician not licensed in Florida to provide expert testimony in child abuse and neglect cases on mental injury using an "expert testimony certificate," but allows expert testimony if they are licensed under another state's corresponding law to chapter 458 F.S., or chapter 459, F.S.

The bill does not appear to have any fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of local sheriff's offices and the Department of Children and Families (DCF) in cases of child abuse and neglect.¹ They are independent, community-based programs that provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions to protect children and to enhance a caregiver's capacity to provide a safer environment when possible.² The Children's Medical Services (CMS) program in the Department of Health is authorized via statute to contract for these CPT services with local community-based programs.³ There are 23 CPTs across the state providing services to all 67 Florida counties.⁴

Child abuse, abandonment and neglect reports to the central abuse hotline that must be referred to child protection teams include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁵

Specialty Certification for Child Abuse Pediatrics

Child abuse pediatricians are responsible for the diagnosis and treatment of children and adolescents who are suspected victims of child maltreatment. This includes physical abuse, sexual abuse, factitious illness (medical child abuse), neglect, and psychological/emotional abuse. These specialty pediatricians participate in multidisciplinary collaborative work within the medical, child welfare, and law enforcement systems. They are also often called to provide expert testimony in court proceedings.⁶

The American Board of Medical Specialties approved the child abuse pediatrics specialty in 2006 and the American Board of Pediatrics issued the first certification exams in late 2009. Three years of full-time, broad-based fellowship training in child abuse pediatrics are required for fellows entering training

¹ Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited March 10, 2015).

² Id.

³ Section 39.303, F.S.

⁴ Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, available at <http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf> (last accessed March 12, 2015)

⁵ Id.

⁶ Council of Pediatric Subspecialties. *Pediatric Child Abuse*, available at: <http://pedsubs.org/SubDes/ChildAbuse.cfm>. (last visited March 10, 2015).

on or after January 1, 2010.⁷ Three-year child abuse fellowships are in various stages of development at academic medical centers because of the new specialty designation. Most of them are housed within children's hospitals across the country, similar to other pediatric specialty fellowships, and will be comprised of both clinical and research training and a requirement for a scholarly project, which will help advance the field.⁸ As of December 31, 2013, there were 324 child abuse pediatrics diplomates nationwide, including 12 in Florida.⁹

The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families, have the responsibility for the screening, employment, and any necessary termination of child protection team medical directors, both at the state and district level.¹⁰ There is currently no statutory requirement related to the qualifications of either the Statewide Medical Director for Child Protection or the district team medical directors. The Florida Administrative Code requires a district team medical director to be a licensed to practice in Florida, board certified in pediatrics, and interested in the field of child abuse and neglect with satisfactory completion of training deemed necessary by the Department of Health.¹¹

Sovereign Immunity

Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.¹² The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.¹³

However, personal liability may result from actions in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.¹⁴

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.¹⁵ In *Stoll v. Noel*, the Florida Supreme Court held that independent contractor physicians may be agents of the state for purposes of sovereign immunity. The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.¹⁶

⁷ Child Abuse Pediatrics Certification, Eligibility Criteria for Certification in Child Abuse Pediatrics, available at <https://www.abp.org/content/child-abuse-pediatrics-certification> (last visited March 11, 2015)

⁸ Giardino, A., Hanson, N., Hill, K.S., and Leventhal, J.M. Child Abuse Pediatrics: New Specialty, Renewed Mission. *Pediatrics* 2011; 128(1):156-159.

⁹ American Board of Pediatrics, *Workforce Databook*, available at <https://www.abp.org/sites/abp/files/pdf/workforcebook.pdf> (last visited March 11, 2015).

¹⁰ *Supra.* at FN 4.

¹¹ Rule 64C-8.002, F.A.C.

¹² S. 768.28(5), F.S.

¹³ *Id.*

¹⁴ S. 768.28(9)(a), F.S.

¹⁵ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

¹⁶ *Id.*

The Stoll court explained that whether the Children's Medical Services (CMS) physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.¹⁷ Furthermore, the court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, the state acknowledged full financial responsibility for the physicians' actions. The court stated that the state's interpretation of its manual is entitled to judicial deference and great weight.¹⁸

Expert Testimony in Child Abuse Cases and Expert Witness Certificate

Section 458.3175, F.S., created the "expert witness certificate" requiring the Department of Health to issue a certificate to an expert witness who is licensed in another jurisdiction before that expert witness may testify in medical negligence cases or provide an affidavit in the pre-suit portion of a medical negligence case. The certificate is good for 2 years, and only authorizes the physician to do the following:

- Provide a verified written medical expert opinion; and
- Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed in Florida.¹⁹

In criminal child abuse and neglect cases, s. 827.03(3), F.S., allows expert testimony in child abuse and neglect cases by physicians licensed under chapter 458 F.S. or 459 F.S., or by physicians who have obtained an expert witness certification under s. 458.3175, F.S.. Section 827.03(3)(b), F.S. requires, to provide expert testimony in mental injury in child abuse and neglect cases, physicians must be licensed under chapter 458 F.S. or 459 F.S. and have completed an accredited residency in psychiatry, or obtained an expert witness certification under s. 458.3175, F.S.

While s. 827.03, F.S., allows experts to testify in criminal child abuse and neglect cases if they have an expert witness certificate, s. 458.3175, F.S., only authorizes a very narrow enumerated use of this certificate and does not currently allow physicians to give expert testimony in child abuse and neglect cases.

Critical Incident Rapid Response Team

The Critical Incident Rapid Response Team (CIRRT) was created by the Legislature in 2014. The CIRRTs are established within DCF to conduct investigations of child death or other serious incidents reported to the central abuse hotline if the child or another child in his or her home was the subject of a verified report of abuse or neglect within the previous 12 months.²⁰ The purpose of the CIRRT is to perform an immediate root-cause analysis of critical incidents and rapidly determine the need to change policies and practices related to child protection and welfare.²¹

Statute requires that the CIRRT be comprised of a multiagency team of at least five professionals with expertise in child protection, child welfare, and organizational management; a majority of the team must reside in judicial circuits outside the location of the incident.²² It does not require a CPT member to be

¹⁷ Id.

¹⁸ Id.

¹⁹ S. 758.3175(2), F.S.

²⁰ S. 39.2015(2), F.S.

²¹ S. 39.2015(1), F.S.

²² S. 39.2015(3), F.S.

appointed to the CIRRT, although CPT members may be appointed to the CIRRT due to their expertise in child protection.

Effect of Proposed Changes

Child Protection Teams

HB 1055 amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection to be:

- A licensed physician under chapters 458 or 459;
- A board-certified pediatrician; and
- A diplomate in the subspecialty of child abuse pediatrics from the American Board of Pediatrics.

The bill requires each district CPT medical director to be:

- A licensed physician under chapters 458 or 459;
- A board-certified pediatrician; and
- A diplomate in the subspecialty of child abuse pediatrics from the American Board of Pediatrics within 2 years after the date of his or her employment as district medical director; or
- Certified by Children's Medical Services as demonstrating specialized competence in child abuse.

Sovereign Immunity

The bill amends s. 768.28(9)(b), F.S., adding a new subparagraph creating a parallel definition of "Officer, employee or agent," to include "a member of a child protection team, as defined in s. 39.01²³, when carrying out his or her duties as a team member." This explicitly enumerates CPT members as falling under the sovereign immunity protections of the state.

Expert Witness Certificate

The bill amends s. 827.03(2), F.S., to state that a physician may not provide expert testimony on mental injury in a criminal child abuse case unless licensed in Florida under chapter 458, F.S., or chapter 459, F.S., or the corresponding laws of another state. The bill removes the ability to use the "expert witness certificate" to provide expert testimony on mental injury in a criminal child abuse or neglect case.

Critical Incident Rapid Response Team

The bill amends s. 39.2015, F.S., to require the inclusion of the local child protection team medical director on any CIRRT.

Lastly, the bill reenacts ss. 39.3031 and 391.026(2), F.S., to incorporate the amendments made by the bill.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.2015(3), F.S., relating to critical incident rapid response team.
Section 2: Amends s. 39.303, F.S., relating to child protection teams.
Section 3: Amends s. 768.28, F.S., relating to sovereign immunity.
Section 4: Amends s. 827.03, F.S., relating to expert testimony in child abuse cases.
Section 5: Reenacts s. 39.3031, F.S., relating to rules for implementation.

²³ S. 39.01 defines a CPT as, "[A] team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases."

- Section 6:** Reenacts s. 391.026(2), F.S., relating to powers and duties of the department.
Section 7: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The cost of obtaining the required child abuse pediatric subspecialty certification is unknown. The subspecialty certification requires a three-year fellowship.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill reenacts the relevant section of statute giving the Department of Health sufficient rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The parallel definition of "Officer, employee or agent" created in s. 768.28(9)(b), F.S., could be integrated into the current definition without the need of a new subparagraph.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to child protection; amending s.
 3 39.2015, F.S.; providing requirements for the
 4 representation of Children's Medical Services on
 5 multiagency teams investigating certain child deaths
 6 or other serious incidents; amending s. 39.303, F.S.;
 7 requiring the Statewide Medical Director for Child
 8 Protection and the district medical directors to hold
 9 certain qualifications; amending s. 768.28, F.S.;
 10 specifying that that child protection team members
 11 carrying out their duties are covered by state
 12 sovereign immunity provisions; amending s. 827.03,
 13 F.S.; deleting a requirement that out-of-state
 14 physicians obtain a specified certificate to provide
 15 expert testimony in criminal child abuse cases
 16 regarding mental injuries; reenacting ss. 39.3031 and
 17 391.026(2), F.S., relating to child protection teams,
 18 to incorporate the amendments made by the act to s.
 19 39.303, F.S., in references thereto; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:
 23

24 Section 1. Subsection (3) of section 39.2015, Florida
 25 Statutes, is amended to read:

26 39.2015 Critical incident rapid response team.—

27 (3) Each investigation shall be conducted by a multiagency
 28 team of at least five professionals with expertise in child
 29 protection, child welfare, and organizational management. The
 30 team may consist of employees of the department, community-based
 31 care lead agencies, Children's Medical Services, to include, at
 32 a minimum, the local child protection team medical director, and
 33 community-based care provider organizations; faculty from the
 34 institute consisting of public and private universities offering
 35 degrees in social work established pursuant to s. 1004.615; or
 36 any other person with the required expertise. The majority of
 37 the team must reside in judicial circuits outside the location
 38 of the incident. The secretary shall appoint a team leader for
 39 each group assigned to an investigation.

40 Section 2. Section 39.303, Florida Statutes, is amended to
 41 read:

42 39.303 Child protection teams; services; eligible cases.—
 43 The Children's Medical Services Program in the Department of
 44 Health shall develop, maintain, and coordinate the services of
 45 one or more multidisciplinary child protection teams in each of
 46 the service districts of the Department of Children and
 47 Families. Such teams may be composed of appropriate
 48 representatives of school districts and appropriate health,
 49 mental health, social service, legal service, and law
 50 enforcement agencies. The Department of Health and the
 51 Department of Children and Families shall maintain an
 52 interagency agreement that establishes protocols for oversight

53 and operations of child protection teams and sexual abuse
 54 treatment programs. The State Surgeon General and the Deputy
 55 Secretary for Children's Medical Services, in consultation with
 56 the Secretary of Children and Families, shall maintain the
 57 responsibility for the screening, employment, and, if necessary,
 58 the termination of child protection team medical directors, at
 59 headquarters and in the 15 districts. The Statewide Medical
 60 Director for Child Protection must be a physician licensed under
 61 chapter 458 or chapter 459 who is a board-certified pediatrician
 62 with a subspecialty certification in child abuse from the
 63 American Board of Pediatrics. Each district medical director
 64 must be a physician licensed under chapter 458 or chapter 459
 65 who is a board-certified pediatrician and, within 2 years after
 66 the date of his or her employment as district medical director,
 67 obtains a subspecialty certification in child abuse from the
 68 American Board of Pediatrics or a certificate issued by the
 69 Deputy Secretary for Children's Medical Services in recognition
 70 of demonstrated specialized competence in child abuse. Child
 71 protection team medical directors shall be responsible for
 72 oversight of the teams in the districts.

73 (1) The Department of Health shall use and convene the
 74 teams to supplement the assessment and protective supervision
 75 activities of the family safety and preservation program of the
 76 Department of Children and Families. This section does not
 77 remove or reduce the duty and responsibility of any person to
 78 report pursuant to this chapter all suspected or actual cases of

79 child abuse, abandonment, or neglect or sexual abuse of a child.
 80 The role of the teams shall be to support activities of the
 81 program and to provide services deemed by the teams to be
 82 necessary and appropriate to abused, abandoned, and neglected
 83 children upon referral. The specialized diagnostic assessment,
 84 evaluation, coordination, consultation, and other supportive
 85 services that a child protection team shall be capable of
 86 providing include, but are not limited to, the following:

87 (a) Medical diagnosis and evaluation services, including
 88 provision or interpretation of X rays and laboratory tests, and
 89 related services, as needed, and documentation of related
 90 findings.

91 (b) Telephone consultation services in emergencies and in
 92 other situations.

93 (c) Medical evaluation related to abuse, abandonment, or
 94 neglect, as defined by policy or rule of the Department of
 95 Health.

96 (d) Such psychological and psychiatric diagnosis and
 97 evaluation services for the child or the child's parent or
 98 parents, legal custodian or custodians, or other caregivers, or
 99 any other individual involved in a child abuse, abandonment, or
 100 neglect case, as the team may determine to be needed.

101 (e) Expert medical, psychological, and related
 102 professional testimony in court cases.

103 (f) Case staffings to develop treatment plans for children
 104 whose cases have been referred to the team. A child protection

105 | team may provide consultation with respect to a child who is
 106 | alleged or is shown to be abused, abandoned, or neglected, which
 107 | consultation shall be provided at the request of a
 108 | representative of the family safety and preservation program or
 109 | at the request of any other professional involved with a child
 110 | or the child's parent or parents, legal custodian or custodians,
 111 | or other caregivers. In every such child protection team case
 112 | staffing, consultation, or staff activity involving a child, a
 113 | family safety and preservation program representative shall
 114 | attend and participate.

115 | (g) Case service coordination and assistance, including
 116 | the location of services available from other public and private
 117 | agencies in the community.

118 | (h) Such training services for program and other employees
 119 | of the Department of Children and Families, employees of the
 120 | Department of Health, and other medical professionals as is
 121 | deemed appropriate to enable them to develop and maintain their
 122 | professional skills and abilities in handling child abuse,
 123 | abandonment, and neglect cases.

124 | (i) Educational and community awareness campaigns on child
 125 | abuse, abandonment, and neglect in an effort to enable citizens
 126 | more successfully to prevent, identify, and treat child abuse,
 127 | abandonment, and neglect in the community.

128 | (j) Child protection team assessments that include, as
 129 | appropriate, medical evaluations, medical consultations, family
 130 | psychosocial interviews, specialized clinical interviews, or

131 forensic interviews.

132

133 All medical personnel participating on a child protection team
 134 must successfully complete the required child protection team
 135 training curriculum as set forth in protocols determined by the
 136 Deputy Secretary for Children's Medical Services and the
 137 Statewide Medical Director for Child Protection. A child
 138 protection team that is evaluating a report of medical neglect
 139 and assessing the health care needs of a medically complex child
 140 shall consult with a physician who has experience in treating
 141 children with the same condition.

142 (2) The child abuse, abandonment, and neglect reports that
 143 must be referred by the department to child protection teams of
 144 the Department of Health for an assessment and other appropriate
 145 available support services as set forth in subsection (1) must
 146 include cases involving:

147 (a) Injuries to the head, bruises to the neck or head,
 148 burns, or fractures in a child of any age.

149 (b) Bruises anywhere on a child 5 years of age or under.

150 (c) Any report alleging sexual abuse of a child.

151 (d) Any sexually transmitted disease in a prepubescent
 152 child.

153 (e) Reported malnutrition of a child and failure of a
 154 child to thrive.

155 (f) Reported medical neglect of a child.

156 (g) Any family in which one or more children have been

157 pronounced dead on arrival at a hospital or other health care
 158 facility, or have been injured and later died, as a result of
 159 suspected abuse, abandonment, or neglect, when any sibling or
 160 other child remains in the home.

161 (h) Symptoms of serious emotional problems in a child when
 162 emotional or other abuse, abandonment, or neglect is suspected.

163 (3) All abuse and neglect cases transmitted for
 164 investigation to a district by the hotline must be
 165 simultaneously transmitted to the Department of Health child
 166 protection team for review. For the purpose of determining
 167 whether face-to-face medical evaluation by a child protection
 168 team is necessary, all cases transmitted to the child protection
 169 team which meet the criteria in subsection (2) must be timely
 170 reviewed by:

171 (a) A physician licensed under chapter 458 or chapter 459
 172 who holds board certification in pediatrics and is a member of a
 173 child protection team;

174 (b) A physician licensed under chapter 458 or chapter 459
 175 who holds board certification in a specialty other than
 176 pediatrics, who may complete the review only when working under
 177 the direction of a physician licensed under chapter 458 or
 178 chapter 459 who holds board certification in pediatrics and is a
 179 member of a child protection team;

180 (c) An advanced registered nurse practitioner licensed
 181 under chapter 464 who has a specialty in pediatrics or family
 182 medicine and is a member of a child protection team;

183 (d) A physician assistant licensed under chapter 458 or
 184 chapter 459, who may complete the review only when working under
 185 the supervision of a physician licensed under chapter 458 or
 186 chapter 459 who holds board certification in pediatrics and is a
 187 member of a child protection team; or

188 (e) A registered nurse licensed under chapter 464, who may
 189 complete the review only when working under the direct
 190 supervision of a physician licensed under chapter 458 or chapter
 191 459 who holds certification in pediatrics and is a member of a
 192 child protection team.

193 (4) A face-to-face medical evaluation by a child
 194 protection team is not necessary when:

195 (a) The child was examined for the alleged abuse or
 196 neglect by a physician who is not a member of the child
 197 protection team, and a consultation between the child protection
 198 team board-certified pediatrician, advanced registered nurse
 199 practitioner, physician assistant working under the supervision
 200 of a child protection team board-certified pediatrician, or
 201 registered nurse working under the direct supervision of a child
 202 protection team board-certified pediatrician, and the examining
 203 physician concludes that a further medical evaluation is
 204 unnecessary;

205 (b) The child protective investigator, with supervisory
 206 approval, has determined, after conducting a child safety
 207 assessment, that there are no indications of injuries as
 208 described in paragraphs (2)(a)-(h) as reported; or

209 (c) The child protection team board-certified
 210 pediatrician, as authorized in subsection (3), determines that a
 211 medical evaluation is not required.

212
 213 Notwithstanding paragraphs (a), (b), and (c), a child protection
 214 team pediatrician, as authorized in subsection (3), may
 215 determine that a face-to-face medical evaluation is necessary.

216 (5) In all instances in which a child protection team is
 217 providing certain services to abused, abandoned, or neglected
 218 children, other offices and units of the Department of Health,
 219 and offices and units of the Department of Children and
 220 Families, shall avoid duplicating the provision of those
 221 services.

222 (6) The Department of Health child protection team quality
 223 assurance program and the Family Safety Program Office of the
 224 Department of Children and Families shall collaborate to ensure
 225 referrals and responses to child abuse, abandonment, and neglect
 226 reports are appropriate. Each quality assurance program shall
 227 include a review of records in which there are no findings of
 228 abuse, abandonment, or neglect, and the findings of these
 229 reviews shall be included in each department's quality assurance
 230 reports.

231 Section 3. Paragraphs (a) and (b) of subsection (9) of
 232 section 768.28, Florida Statutes, are amended to read:

233 768.28 Waiver of sovereign immunity in tort actions;
 234 recovery limits; limitation on attorney fees; statute of

235 | limitations; exclusions; indemnification; risk management
 236 | programs.—

237 | (9) (a) No officer, employee, or agent of the state or of
 238 | any of its subdivisions shall be held personally liable in tort
 239 | or named as a party defendant in any action for any injury or
 240 | damage suffered as a result of any act, event, or omission of
 241 | action in the scope of her or his employment or function, unless
 242 | such officer, employee, or agent acted in bad faith or with
 243 | malicious purpose or in a manner exhibiting wanton and willful
 244 | disregard of human rights, safety, or property. However, such
 245 | officer, employee, or agent shall be considered an adverse
 246 | witness in a tort action for any injury or damage suffered as a
 247 | result of any act, event, or omission of action in the scope of
 248 | her or his employment or function. The exclusive remedy for
 249 | injury or damage suffered as a result of an act, event, or
 250 | omission of an officer, employee, or agent of the state or any
 251 | of its subdivisions or constitutional officers shall be by
 252 | action against the governmental entity, or the head of such
 253 | entity in her or his official capacity, or the constitutional
 254 | officer of which the officer, employee, or agent is an employee,
 255 | unless such act or omission was committed in bad faith or with
 256 | malicious purpose or in a manner exhibiting wanton and willful
 257 | disregard of human rights, safety, or property. The state or its
 258 | subdivisions shall not be liable in tort for the acts or
 259 | omissions of an officer, employee, or agent committed while
 260 | acting outside the course and scope of her or his employment or

261 committed in bad faith or with malicious purpose or in a manner
 262 exhibiting wanton and willful disregard of human rights, safety,
 263 or property.

264 (b) As used in this subsection, the term:

265 1. "Employee" includes any volunteer firefighter.

266 2. "Officer, employee, or agent" includes, but is not
 267 limited to, any health care provider when providing services
 268 pursuant to s. 766.1115; any nonprofit independent college or
 269 university located and chartered in this state which owns or
 270 operates an accredited medical school, and its employees or
 271 agents, when providing patient services pursuant to paragraph
 272 (10)(f); and any public defender or her or his employee or
 273 agent, including, among others, an assistant public defender and
 274 an investigator.

275 3. "Officer, employee, or agent" includes a member of a
 276 child protection team, as defined in s. 39.01, when carrying out
 277 his or her duties as a team member.

278 Section 4. Paragraph (b) of subsection (3) of section
 279 827.03, Florida Statutes, is amended to read:

280 827.03 Abuse, aggravated abuse, and neglect of a child;
 281 penalties.—

282 (3) EXPERT TESTIMONY.—

283 (b) A physician may not provide expert testimony in a
 284 criminal child abuse case regarding mental injury unless the
 285 physician is a physician licensed under chapter 458 or chapter
 286 459 or the corresponding laws of another state and who has

287 completed an accredited residency in psychiatry ~~or has obtained~~
 288 ~~certification as an expert witness pursuant to s. 458.3175.~~

289 Section 5. For the purpose of incorporating the amendments
 290 made by this act to section 39.303, Florida Statutes, in a
 291 reference thereto, section 39.3031, Florida Statutes, is
 292 reenacted to read:

293 39.3031 Rules for implementation of s. 39.303.—The
 294 Department of Health, in consultation with the Department of
 295 Children and Families, shall adopt rules governing the child
 296 protection teams pursuant to s. 39.303, including definitions,
 297 organization, roles and responsibilities, eligibility, services
 298 and their availability, qualifications of staff, and a waiver-
 299 request process.

300 Section 6. For the purpose of incorporating the amendments
 301 made by this act to section 39.303, Florida Statutes, in a
 302 reference thereto, subsection (2) of section 391.026, Florida
 303 Statutes, is reenacted to read:

304 391.026 Powers and duties of the department.—The
 305 department shall have the following powers, duties, and
 306 responsibilities:

307 (2) To provide services to abused and neglected children
 308 through child protection teams pursuant to s. 39.303.

309 Section 7. This act shall take effect July 1, 2015.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Children, Families &
 2 Seniors Subcommittee

3 Representative Harrell offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (3) of section 39.2015, Florida
 8 Statutes, is amended to read:

9 39.2015 Critical incident rapid response team.—

10 (3) Each investigation shall be conducted by a multiagency
 11 team of at least five professionals with expertise in child
 12 protection, child welfare, and organizational management. The
 13 team may consist of employees of the department, community-based
 14 care lead agencies, Children's Medical Services, and community-
 15 based care provider organizations; faculty from the institute
 16 consisting of public and private universities offering degrees
 17 in social work established pursuant to s. 1004.615; or any other



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18 person with the required expertise. The team shall include, at a
19 minimum, the local child protection team medical director. The
20 majority of the team must reside in judicial circuits outside
21 the location of the incident. The secretary shall appoint a team
22 leader for each group assigned to an investigation.

23 Section 2. Section 39.303, Florida Statutes, is amended to
24 read:

25 39.303 Child protection teams; services; eligible cases.-
26 The Children's Medical Services Program in the Department of
27 Health shall develop, maintain, and coordinate the services of
28 one or more multidisciplinary child protection teams in each of
29 the service districts of the Department of Children and
30 Families. Such teams may be composed of appropriate
31 representatives of school districts and appropriate health,
32 mental health, social service, legal service, and law
33 enforcement agencies. The Department of Health and the
34 Department of Children and Families shall maintain an
35 interagency agreement that establishes protocols for oversight
36 and operations of child protection teams and sexual abuse
37 treatment programs. The State Surgeon General and the Deputy
38 Secretary for Children's Medical Services, in consultation with
39 the Secretary of Children and Families, shall maintain the
40 responsibility for the screening, employment, and, if necessary,
41 the termination of child protection team medical directors, at
42 headquarters and in the 15 districts.



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43 (1) (a) The Statewide Medical Director for Child Protection
44 must be a physician licensed under chapter 458 or chapter 459
45 who is a board-certified pediatrician with a subspecialty
46 certification in child abuse from the American Board of
47 Pediatrics.

48 (b) Each district medical director must be a physician
49 licensed under chapter 458 or chapter 459 who is a board-
50 certified pediatrician and, within 2 years after the date of his
51 or her employment as a district medical director, either obtains
52 a subspecialty certification in child abuse from the American
53 Board of Pediatrics or meets the minimum requirements
54 established by a third-party credentialing entity recognizing a
55 demonstrated specialized competence in child abuse pediatrics
56 pursuant to (d). Child protection team medical directors shall
57 be responsible for oversight of the teams in the districts.

58 (c) All medical personnel participating on a child
59 protection team must successfully complete the required child
60 protection team training curriculum as set forth in protocols
61 determined by the Deputy Secretary for Children's Medical
62 Services and the Statewide Medical Director for Child
63 Protection.

64 (d) The department shall approve one or more third-party
65 credentialing entities for the purpose of developing and
66 administering a professional credentialing program for district
67 medical directors. Within 90 days after receiving documentation
68 from a third-party credentialing entity, the department shall



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69 approve a third-party credentialing entity that demonstrates
70 compliance with the following minimum standards:

71 (a) Establishment of child abuse pediatrics core
72 competencies, certification standards, testing instruments, and
73 recertification standards according to national psychometric
74 standards.

75 (b) Establishment of a process to administer the
76 certification application, award, and maintenance processes
77 according to national psychometric standards.

78 (c) Demonstrated ability to administer a professional code
79 of ethics and disciplinary process that applies to all certified
80 persons.

81 (d) Establishment of, and ability to maintain, a publicly
82 accessible Internet-based database that contains information on
83 each person who applies for and is awarded certification, such
84 as the person's first and last name, certification status, and
85 ethical or disciplinary history.

86 (e) Demonstrated ability to administer biannual continuing
87 education and certification renewal requirements.

88 (f) Demonstrated ability to administer an education
89 provider program to approve qualified training entities and to
90 provide precertification training to applicants and continuing
91 education opportunities to certified professionals.

92 (2)-(1) The Department of Health shall use and convene the
93 teams to supplement the assessment and protective supervision
94 activities of the family safety and preservation program of the



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95 Department of Children and Families. This section does not
96 remove or reduce the duty and responsibility of any person to
97 report pursuant to this chapter all suspected or actual cases of
98 child abuse, abandonment, or neglect or sexual abuse of a child.
99 The role of the teams shall be to support activities of the
100 program and to provide services deemed by the teams to be
101 necessary and appropriate to abused, abandoned, and neglected
102 children upon referral. The specialized diagnostic assessment,
103 evaluation, coordination, consultation, and other supportive
104 services that a child protection team shall be capable of
105 providing include, but are not limited to, the following:

106 (a) Medical diagnosis and evaluation services, including
107 provision or interpretation of X rays and laboratory tests, and
108 related services, as needed, and documentation of related
109 findings.

110 (b) Telephone consultation services in emergencies and in
111 other situations.

112 (c) Medical evaluation related to abuse, abandonment, or
113 neglect, as defined by policy or rule of the Department of
114 Health.

115 (d) Such psychological and psychiatric diagnosis and
116 evaluation services for the child or the child's parent or
117 parents, legal custodian or custodians, or other caregivers, or
118 any other individual involved in a child abuse, abandonment, or
119 neglect case, as the team may determine to be needed.



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120 (e) Expert medical, psychological, and related
121 professional testimony in court cases.

122 (f) Case staffings to develop treatment plans for children
123 whose cases have been referred to the team. A child protection
124 team may provide consultation with respect to a child who is
125 alleged or is shown to be abused, abandoned, or neglected, which
126 consultation shall be provided at the request of a
127 representative of the family safety and preservation program or
128 at the request of any other professional involved with a child
129 or the child's parent or parents, legal custodian or custodians,
130 or other caregivers. In every such child protection team case
131 staffing, consultation, or staff activity involving a child, a
132 family safety and preservation program representative shall
133 attend and participate.

134 (g) Case service coordination and assistance, including
135 the location of services available from other public and private
136 agencies in the community.

137 (h) Such training services for program and other employees
138 of the Department of Children and Families, employees of the
139 Department of Health, and other medical professionals as is
140 deemed appropriate to enable them to develop and maintain their
141 professional skills and abilities in handling child abuse,
142 abandonment, and neglect cases.

143 (i) Educational and community awareness campaigns on child
144 abuse, abandonment, and neglect in an effort to enable citizens



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145 more successfully to prevent, identify, and treat child abuse,
146 abandonment, and neglect in the community.

147 (j) Child protection team assessments that include, as
148 appropriate, medical evaluations, medical consultations, family
149 psychosocial interviews, specialized clinical interviews, or
150 forensic interviews.

151
152 ~~All medical personnel participating on a child protection team~~
153 ~~must successfully complete the required child protection team~~
154 ~~training curriculum as set forth in protocols determined by the~~
155 ~~Deputy Secretary for Children's Medical Services and the~~
156 ~~Statewide Medical Director for Child Protection. A child~~
157 protection team that is evaluating a report of medical neglect
158 and assessing the health care needs of a medically complex child
159 shall consult with a physician who has experience in treating
160 children with the same condition.

161 ~~(3)(2)~~ The child abuse, abandonment, and neglect reports
162 that must be referred by the department to child protection
163 teams of the Department of Health for an assessment and other
164 appropriate available support services as set forth in
165 subsection (1) must include cases involving:

166 (a) Injuries to the head, bruises to the neck or head,
167 burns, or fractures in a child of any age.

168 (b) Bruises anywhere on a child 5 years of age or under.

169 (c) Any report alleging sexual abuse of a child.



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170 (d) Any sexually transmitted disease in a prepubescent
171 child.

172 (e) Reported malnutrition of a child and failure of a
173 child to thrive.

174 (f) Reported medical neglect of a child.

175 (g) Any family in which one or more children have been
176 pronounced dead on arrival at a hospital or other health care
177 facility, or have been injured and later died, as a result of
178 suspected abuse, abandonment, or neglect, when any sibling or
179 other child remains in the home.

180 (h) Symptoms of serious emotional problems in a child when
181 emotional or other abuse, abandonment, or neglect is suspected.

182 ~~(4)~~(3) All abuse and neglect cases transmitted for
183 investigation to a district by the hotline must be
184 simultaneously transmitted to the Department of Health child
185 protection team for review. For the purpose of determining
186 whether face-to-face medical evaluation by a child protection
187 team is necessary, all cases transmitted to the child protection
188 team which meet the criteria in subsection (2) must be timely
189 reviewed by:

190 (a) A physician licensed under chapter 458 or chapter 459
191 who holds board certification in pediatrics and is a member of a
192 child protection team;

193 (b) A physician licensed under chapter 458 or chapter 459
194 who holds board certification in a specialty other than
195 pediatrics, who may complete the review only when working under



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196 the direction of a physician licensed under chapter 458 or
197 chapter 459 who holds board certification in pediatrics and is a
198 member of a child protection team;

199 (c) An advanced registered nurse practitioner licensed
200 under chapter 464 who has a specialty in pediatrics or family
201 medicine and is a member of a child protection team;

202 (d) A physician assistant licensed under chapter 458 or
203 chapter 459, who may complete the review only when working under
204 the supervision of a physician licensed under chapter 458 or
205 chapter 459 who holds board certification in pediatrics and is a
206 member of a child protection team; or

207 (e) A registered nurse licensed under chapter 464, who may
208 complete the review only when working under the direct
209 supervision of a physician licensed under chapter 458 or chapter
210 459 who holds certification in pediatrics and is a member of a
211 child protection team.

212 ~~(5)(4)~~ A face-to-face medical evaluation by a child
213 protection team is not necessary when:

214 (a) The child was examined for the alleged abuse or
215 neglect by a physician who is not a member of the child
216 protection team, and a consultation between the child protection
217 team board-certified pediatrician, advanced registered nurse
218 practitioner, physician assistant working under the supervision
219 of a child protection team board-certified pediatrician, or
220 registered nurse working under the direct supervision of a child
221 protection team board-certified pediatrician, and the examining



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222 physician concludes that a further medical evaluation is
223 unnecessary;

224 (b) The child protective investigator, with supervisory
225 approval, has determined, after conducting a child safety
226 assessment, that there are no indications of injuries as
227 described in paragraphs (2) (a) - (h) as reported; or

228 (c) The child protection team board-certified
229 pediatrician, as authorized in subsection (3), determines that a
230 medical evaluation is not required.

231
232 Notwithstanding paragraphs (a), (b), and (c), a child protection
233 team pediatrician, as authorized in subsection (3), may
234 determine that a face-to-face medical evaluation is necessary.

235 ~~(6)(5)~~ In all instances in which a child protection team
236 is providing certain services to abused, abandoned, or neglected
237 children, other offices and units of the Department of Health,
238 and offices and units of the Department of Children and
239 Families, shall avoid duplicating the provision of those
240 services.

241 ~~(7)(6)~~ The Department of Health child protection team
242 quality assurance program and the Family Safety Program Office
243 of the Department of Children and Families shall collaborate to
244 ensure referrals and responses to child abuse, abandonment, and
245 neglect reports are appropriate. Each quality assurance program
246 shall include a review of records in which there are no findings
247 of abuse, abandonment, or neglect, and the findings of these



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248 reviews shall be included in each department's quality assurance
249 reports.

250 Section 3. Paragraph (b) of subsection (9) of section
251 768.28, Florida Statutes, is amended to read:

252 768.28 Waiver of sovereign immunity in tort actions;
253 recovery limits; limitation on attorney fees; statute of
254 limitations; exclusions; indemnification; risk management
255 programs.—

256 (9) (a) No officer, employee, or agent of the state or of
257 any of its subdivisions shall be held personally liable in tort
258 or named as a party defendant in any action for any injury or
259 damage suffered as a result of any act, event, or omission of
260 action in the scope of her or his employment or function, unless
261 such officer, employee, or agent acted in bad faith or with
262 malicious purpose or in a manner exhibiting wanton and willful
263 disregard of human rights, safety, or property. However, such
264 officer, employee, or agent shall be considered an adverse
265 witness in a tort action for any injury or damage suffered as a
266 result of any act, event, or omission of action in the scope of
267 her or his employment or function. The exclusive remedy for
268 injury or damage suffered as a result of an act, event, or
269 omission of an officer, employee, or agent of the state or any
270 of its subdivisions or constitutional officers shall be by
271 action against the governmental entity, or the head of such
272 entity in her or his official capacity, or the constitutional
273 officer of which the officer, employee, or agent is an employee,



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274 unless such act or omission was committed in bad faith or with
275 malicious purpose or in a manner exhibiting wanton and willful
276 disregard of human rights, safety, or property. The state or its
277 subdivisions shall not be liable in tort for the acts or
278 omissions of an officer, employee, or agent committed while
279 acting outside the course and scope of her or his employment or
280 committed in bad faith or with malicious purpose or in a manner
281 exhibiting wanton and willful disregard of human rights, safety,
282 or property.

283 (b) As used in this subsection, the term:

284 1. "Employee" includes any volunteer firefighter.

285 2. "Officer, employee, or agent" includes, but is not
286 limited to, any health care provider when providing services
287 pursuant to s. 766.1115; any nonprofit independent college or
288 university located and chartered in this state which owns or
289 operates an accredited medical school, and its employees or
290 agents, when providing patient services pursuant to paragraph
291 (10)(f); ~~and~~ any public defender or her or his employee or
292 agent, including, among others, an assistant public defender and
293 an investigator; and any member of a child protection team, as
294 defined in s. 39.01(13), when carrying out his or her duties as
295 a team member.

296 Section 4. Subsection (2) of section 458.3175, Florida
297 Statutes, is amended to read:

298 458.3175 Expert witness certificate.—



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299 (2) An expert witness certificate authorizes the physician
300 to whom the certificate is issued to do only the following:

301 (a) Provide a verified written medical expert opinion as
302 provided in s. 766.203.

303 (b) Provide expert testimony about the prevailing
304 professional standard of care in connection with medical
305 negligence litigation pending in this state against a physician
306 licensed under this chapter or chapter 459.

307 (c) Provide expert testimony in criminal child abuse and
308 neglect cases in this state.

309 Section 5. For the purpose of incorporating the amendments
310 made by this act to section 39.303, Florida Statutes, in a
311 reference thereto, section 39.3031, Florida Statutes, is
312 reenacted to read:

313 39.3031 Rules for implementation of s. 39.303.—The
314 Department of Health, in consultation with the Department of
315 Children and Families, shall adopt rules governing the child
316 protection teams pursuant to s. 39.303, including definitions,
317 organization, roles and responsibilities, eligibility, services
318 and their availability, qualifications of staff, and a waiver-
319 request process.

320 Section 6. For the purpose of incorporating the amendments
321 made by this act to section 39.303, Florida Statutes, in a
322 reference thereto, subsection (2) of section 391.026, Florida
323 Statutes, is reenacted to read:



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324 391.026 Powers and duties of the department.—The
325 department shall have the following powers, duties, and
326 responsibilities:

327 (2) To provide services to abused and neglected children
328 through child protection teams pursuant to s. 39.303.

329 Section 7. This act shall take effect July 1, 2015.

330

331

332

T I T L E A M E N D M E N T

333

Remove everything before the enacting clause and insert:

334

A bill to be entitled

335

An act relating to child protection; amending s. 39.2015, F.S.;

336

providing requirements for the representation of Children's

337

Medical Services on multiagency teams investigating certain

338

child deaths or other serious incidents; amending s. 39.303,

339

F.S.; requiring the Statewide Medical Director for Child

340

Protection and the district medical directors to hold certain

341

qualifications; requiring the Department of Health to approve a

342

third-party credentialing entity; amending s. 768.28, F.S.;

343

specifying that that child protection team members are covered

344

by state sovereign immunity provisions when carrying out their

345

duties; amending s. 458.3175, F.S.; adding expert testimony in

346

child abuse and neglect cases; reenacting ss. 39.3031 and

347

391.026(2), F.S., relating to child protection teams, to

348


incorporate the amendments made by the act to s. 39.303, F.S.,

349

in references thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1225 Guardianship
SPONSOR(S): Ahern and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Langston W.	Brazzell 
2) Health Care Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill substantially reorganizes ch. 744, F.S. It expands the duties of the Statewide Public Guardianship Office (SPGO) within the Department of Elder Affairs (DOEA) to oversee professional guardians as well as public guardians. The bill renames the SPGO as the Office of Public and Professional Guardian (OPPG).

The bill provides that the executive director of the new OPPG is appointed by the Secretary of DOEA. The bill sets out the new duties and responsibilities of the executive director of the OPPG. It also requires the annual registration of professional guardians through the OPPG.

Currently the SPGO only oversees registration of professional guardians, including the denial, suspension, or revocation of the registration; the new OPPG will maintain the duties relating to registration and will also be responsible for monitoring and disciplining the professional guardians. OPPG will not have the authority to suspend or revoke a registration but will instead make a final recommendation of suspension or revocation subject to court approval. Courts will remain the only entities authorized to remove a guardian from a case to which he or she is appointed.

OPPG is directed to adopt rules to establish disciplinary oversight, including the receiving complaints, investigating complaints, conducting hearings, and taking administrative action pursuant to ch. 120, F.S.

The bill changes the process for selecting court-appointed professional guardians. It requires the courts to appoint professional guardians in the order in which names appear on the registry, unless the court makes a finding on the record to appoint a professional guardian out of order.

The bill will have an indeterminate significant negative fiscal impact on DOEA. DOEA will incur costs overseeing the approximately 450 professional guardians in addition to the 50 public guardians it currently oversees. There is no fiscal impact on local governments.

The bill provides for an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who has been appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.¹

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.² Once a person has been adjudicated incapacitated, the court may appoint a guardian. The order appointing a guardian must be consistent with the incapacitated person's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the incapacitated person the right to make decisions in all matters commensurate with the person's ability to do so.³

Who Can Be Appointed Guardian

The following meet the criteria to be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, and serves without compensation; or
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests.⁴

Relationship Between Guardian and Ward

The relationship between a guardian and his or her ward is a fiduciary one.⁵ A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.⁶ Section 744.446, F.S., explicitly states that there is a fiduciary relationship which exists between the guardian and the ward and that such relationship may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law. Additionally, s. 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary. The two most basic fiduciary duties are the duty of loyalty and the duty of care. As such, the guardian must act in the best interest of the ward and carry out his or

¹ S. 744.012(9), F.S.

² S. 744.3201, F.S.

³ S. 744.344, F.S.

⁴ S. 744.309, F.S.

⁵ *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁶ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

her responsibilities in an informed and considered manner. Should a guardian breach his or her fiduciary duty to the ward, the court is authorized to intervene.⁷

Oversight of Guardians

Guardians are subject to the requirements of ch. 744, F.S. There are three main types of guardians: family or friends of the ward, professional guardians, and public guardians. The two types of guardians overseen by the Department of Elder Affairs (DOEA) are professional guardians and public guardians.

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. A public guardian is considered a professional guardian for purposes of regulation, education, and registration.⁸ There are currently 465 professional guardians registered with the Statewide Public Guardianship Office (SPGO).⁹ The number of wards they serve is unknown.

Registration

A professional guardian must register with the SPGO established in part IX of ch. 744.¹⁰ 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 SPGO;
- Complete a minimum of 16 hours of continuing education every 2 calendar years through a course approved or offered by the SPGO;
- Successfully pass an examination approved by DOEA¹¹ to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE);
- Submit to a credit history check; and
- Maintain a current blanket bond.¹²

The executive director of the SPGO 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. If the executive director denies registration to a professional guardian, the SPGO must send written notification of the denial to the chief judge of each judicial circuit in which the guardian was serving on the day of the SPGO's decision to deny the registration.¹³

Compensation

The guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf,¹⁴ is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the assets of the guardianship estate unless the court finds the requested compensation to be

⁷ S. 744.446(4), F.S.,

⁸ S. 744.012(7), F.S.

⁹ Department of Elder Affairs, *2015 Legislative Bill Analysis*, March 6, 2015 (on file with Children, Families, and Seniors Subcommittee staff).

¹⁰ S. 744.1083(1), F.S.

¹¹ The examination is currently administered by the University of South Florida's College of Education. University of South Florida, *Florida Professional Guardian Examination*, <http://guardianship.usf.edu/index.html> (last visited March 15, 2015).

¹² S. 744.1083(3), F.S.; s. 744.1085, F.S.; s. 744.3135, F.S.

¹³ S. 744.1083(5), F.S.

¹⁴ Fees for legal services may include customary and reasonable charges for work performed by legal assistants employed by and working under the direction of the attorney. S. 744.108(4), F.S.

substantially unreasonable.¹⁵ Before the fees may be paid, a petition for fees or expenses must be filed with the court and accompanied by an itemized description of the services performed for the fees and expenses sought to be recovered.¹⁶ When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider:

- The time and labor required;
- The novelty and difficulty of the questions involved and the skill required to perform the services properly;
- The likelihood that the acceptance of the particular employment will preclude other employment of the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- The results obtained;
- The time limits imposed by the circumstances;
- The nature and length of the relationship with the incapacitated person; and
- The experience, reputation, diligence, and ability of the person performing the service.¹⁷

Powers and Duties of the Guardian

The guardian of an incapacitated person may exercise only those rights that have been removed from the ward and delegated to the guardian.¹⁸ The guardian has a great deal of power when it comes to managing the ward's estate. Some of these powers require court approval before they may be exercised.

Examples of Powers That May Be Exercised By a Guardian	
Upon Court Approval¹⁹	Without Court Approval²⁰
<ul style="list-style-type: none"> • Enter into contracts that are appropriate for, and in the best interest of, the ward. • Perform, compromise, or refuse performance of a ward's existing contracts. • Alter the ward's property ownership interests, including selling, mortgaging, or leasing any real property (including the homestead), personal property, or any interest therein • Borrow money to be repaid from the property of the ward or the ward's estate. • Renegotiate, extend, renew, or modify the terms of any obligation owing to the ward. • Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate. • Exercise any option contained in any policy of insurance payable to the ward. • Make gifts of the ward's property members of the ward's family in estate and income tax planning. • Pay reasonable funeral, interment, and grave marker expenses for the ward. 	<ul style="list-style-type: none"> • Retain assets owned by the ward. • Receive assets from fiduciaries or other sources. • Insure the assets of the estate against damage, loss, and liability. • Pay taxes and assessments on the ward's property. • Pay reasonable living expenses for the ward, taking into consideration the wards current finances. • Pay incidental expenses in the administration of the estate. • Prudently invest liquid assets belonging to the ward. • Sell or exercise stock subscription or conversion rights. • Consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise of the ward. • Employ, pay or reimburse, persons, including attorneys, auditors, investment advisers, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties.

¹⁵ S. 744.108(1), (8), F.S.

¹⁶ S. 744.108(5), (7), F.S.

¹⁷ S. 744.108(2), F.S.

¹⁸ S. 744.361(1), F.S.

¹⁹ S. 744.441, F.S.

²⁰ S. 744.444, F.S.

There are also a number of duties imposed on a guardian. The guardian must:

- File an initial report within 60 days after the letters of guardianship are signed.
- File an annual report consisting of an annual accounting and/or an annual guardianship plan.
- Implement the guardianship plan.
- Consult with other guardians appointed, if any.
- Protect and preserve the property of the ward; invest it prudently, apply income first to the ward before the ward's dependents, and account for it faithfully.
- Observe the standards in dealing with the guardianship property that would be observed by a prudent person dealing with the property of another, and, if the guardian has special skills or is named guardian on the basis of representations of special skills or expertise, he or she is under a duty to use those skills.
- If authorized by the court, take possession of all of the ward's property and of the rents, income, issues, and profits from it, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, lease, or mortgage of the property or of any part.
- Additionally, a professional guardian must ensure that each of the guardian's wards is personally visited by the guardian or one of the guardian's professional staff at least once each calendar quarter.²¹

Responsibilities of the Clerk of the Circuit Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk shall review each initial and annual guardianship report to ensure that it contains required information about the ward.²² The clerk is required to:

- Within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report.
- Within 90 days after the filing of the verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory and the accountings and advise the court of the results of the audit.
- Report to the court when a report is not timely filed.

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.²³

Discipline of Guardian

If a guardian who is currently registered with the SPGO violates a provision of ch. 744, F.S., the executive director of the SPGO may suspend or revoke the guardian's registration. SPGO does not have the authority to take any other disciplinary action against the guardian. Currently, the SPGO does not monitor professional guardians, nor does it conduct investigations into complaints received regarding professional guardians; it only undertakes those actions for public guardians.²⁴

Once the executive director suspends or revokes a professional guardian's registration, the SPGO must send written notification of the suspension or revocation to the chief judge of each judicial circuit in which the guardian was serving on the day of the decision to suspend or revoke the registration.²⁵

²¹ S. 744.361, F.S.

²² S. 744.368, F.S.

²³ Id.

²⁴ Meeting with Department of Elder Affairs on March 13, 2015.

²⁵ S. 744.1083(5), F.S.

SPGO has no authority to remove a guardian from cases to which he or she has been appointed; that authority rests with the courts. The court may remove a guardian for a number of reasons, including:

- Fraud in obtaining her or his appointment.
- Failure to discharge her or his duties.
- Abuse of her or his powers.
- An incapacity or illness, including substance abuse, which renders the guardian incapable of discharging her or his duties.
- Failure to comply with any order of the court.
- The wasting, embezzlement, or other mismanagement of the ward's property.
- Development of a conflict of interest between the ward and the guardian.
- A material failure to comply with the guardianship report.
- A failure to comply with the rules for timely filing the initial and annual guardianship reports.
- A failure to fulfill the guardianship education requirements.²⁶

Public Guardianship

The "Public Guardianship Act"²⁷ was created by the Florida Legislature in 1999 to help provide services to meet the needs of vulnerable persons who lack the capacity to make decisions on their own behalf.²⁸ SPGO is responsible for appointing and overseeing Florida's public guardians.²⁹

The Public Guardianship Act authorizes the executive director of the SPGO, after consultation with the chief judge and other circuit judges within the judicial circuit and with appropriate advocacy groups to establish, within a county in the judicial circuit or within the judicial circuit, one or more offices of public guardian.³⁰ Once established, the executive director must create a list of persons best qualified to serve as the public guardian.³¹ The public guardian is directed to maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions.³² As of January 2013, there were 13 offices of public guardian that served 27 of 67 counties; by December of that year, SPGO expanded public guardianship services to cover all 67 counties.³³

As of December 31, 2014, there were 51 public guardians, serving approximately 3,000 wards, overseen by SPGO. SPGO monitors the public guardians by conducting in depth investigations into the local programs³⁴ administration and use of financial resources.³⁵ SPGO's fiscal monitoring includes investigating whether public guardians are spending state resources reasonably and whether they are spending the wards' assets reasonably.³⁶ SPGO reviews the case files and notes if there are any show cause orders or other issues that need to be addressed; additionally, SPGO conducts random site visits for at least 20% of the wards belonging to each public guardian.³⁷

²⁶ S. 744.477, F.S.

²⁷ S. 744.701, F.S.

²⁸ Department of Elder Affairs, *2015 Legislative Bill Analysis*, March 6, 2015 (on file with Children, Families, and Seniors Subcommittee staff).

²⁹ S. 744.7021, F.S.

³⁰ S. 744.703(1), F.S.

³¹ Id.

³² Id.

³³ Florida is the only state, except for Delaware, which has three counties, to accomplish statewide coverage of public guardian services in every county. Florida Department of Elder Affairs, *Summary of Programs and Services*, February, 2014, *available at* http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2014/2014%20SOPS_complete.pdf

³⁴ These are entities that have contracted with SPGO to provide public guardian services.

³⁵ Meeting with Department of Elder Affairs on March 13, 2015.

³⁶ Id.

³⁷ Id.

Problems in the Guardianship System

In 2003, the Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, conducted a review of how effectively guardians were fulfilling their duties and obligations.³⁸ At that time, Florida was already confronting issues such as how the courts would be able to adequately exercise their legal, ethical, and moral responsibilities to monitor guardianship cases and protect the incapacitated adults entrusted to their care.³⁹ The committee received input from citizens that there was abuse, neglect, and misuse of ward's funds.⁴⁰ As a result, the committee stated that, though the majority of guardians are law-abiding and are diligently fulfilling their complex responsibilities, a small percentage are not properly handling guardianship matters, and as a result, monitoring is necessary.⁴¹ In 2004, DOEA released the Final Report of its Guardianship Task Force⁴² which also advocated for additional oversight of professional guardians. These reports triggered a number of the requirements for professional guardian registration that are now in place. Since then, media outlets have continued to report on issues within the guardianship system.^{43 44}

Effect of Proposed Changes

The bill substantially reorganizes ch. 744, F.S. It includes a legislative finding that private guardianship is inadequate where there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian for an incapacitated person and such person does not have adequate income or wealth for the compensation of the private guardian. The term "private guardian" is not presently defined in statute, nor is it defined by the bill.

The bill expands the responsibilities of SPGO within DOEA regarding oversight of professional guardians. The bill renames the SPGO as the Office of Public and Professional Guardian (OPPG).

The bill provides that the executive director of the new OPPG is appointed by the Secretary of DOEA. The bill sets out the new duties and responsibilities of the executive director of the Office of Public and Professional Guardians. OPPG is responsible for development of training curriculum, and for setting minimum requirements for instructional hours and examination score necessary for passage of the guardianship examination.

The new duties imposed on OPPG are:

- The development and implementation of a monitoring tool to oversee professional guardians;
- The development of procedures to review allegations that a professional guardian has violated an applicable statute, rule, regulation, standard of practice, fiduciary duty, or other requirement governing appropriate conduct;
- The establishment of disciplinary proceedings, including receiving complaints, investigating complaints, conducting hearings, and taking administrative action pursuant to ch. 120, F.S.

³⁸ Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, *available at* <http://flcourts.org/core/fileparse.php/260/urlt/guardianshipmonitoring.pdf>

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, *available at* <http://elderaffairs.state.fl.us/doea/pubguard/GTF2004FinalReport.pdf>

⁴³ An article from May 2014 provides anecdotal evidence of fraud within the guardianship system, noting that the appointed court monitor for Broward County has uncovered hundreds of thousands of dollars that guardians have misappropriated from their wards, and, over the course of two years, Palm Beach County's guardianship fraud hotline has investigated over 100 cases. Michael E. Miller, *Florida's Guardians Often Exploit the Vulnerable Residents They're Supposed to Protect*, MIAMI NEWTIMES, May 8, 2014, *available at* <http://www.miaminewtimes.com/2014-05-08/news/florida-guardian-elderly-fraud/full/>

⁴⁴ A three-part series published in December 2014 details abuses occurring in guardianships based on an evaluation of guardianship court case files and interviews with wards, family and friends caught in the system against their will. Barbara Peters Smith, *the Kindness of Strangers – Inside Elder Guardianship in Florida*, SARASOTA HERALD-TRIBUNE, December 6, 2014, *available at* <http://guardianship.heraldtribune.com/default.aspx>

OPPG is directed to adopt rules regarding these duties.

Financial oversight of professional guardians remains with the courts. The bill expressly reserves the ability to conduct a financial audit of professional guardians to the courts. The courts remain responsible for reviewing annual financial reports filed with them by professional guardians.

The bill removes the authority of the executive director to suspend or revoke a guardian's registration. Under the bill, OPPG may make a final recommendation of suspension or revocation following a disciplinary proceeding; however, the authority to suspend or revoke will rest with the circuit court.

It also requires the annual registration of professional guardians. This registry will be used by the courts for appointing guardians. The registry will be compiled by the chief judge in each judicial circuit and certified by OPPG. This list will be provided to the clerk of the court. Courts will be required to appoint professional guardians in the order in which names appear on the applicable registry, unless the court makes a finding of good cause on the record to appoint a professional guardian out of order.

The bill will have an indeterminate significant negative impact on DOEA. DOEA will incur costs to regulate and oversee the approximately 450 professional guardians in addition to the 50 public guardians it currently oversees.

The bill provides for an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Provides directives to the Division of Law Revision and Information.

Section 2: Provides directives to the Division of Law Revision and Information.

Section 3: Provides directives to the Division of Law Revision and Information.

Section 4: Amends s. 744.1012, F.S., relating to legislative intent.

Section 5: Renumbers s. 744.201, F.S., as s. 744.1096, F.S.

Section 6: Amends s. 744.202, F.S., renumbered as 744.1097, F.S., relating to venue.

Section 7: Renumbers s. 744.2025, F.S., as s. 744.1098, F.S.

Section 8: Amends s. 744.7021, F.S., renumbering it as s. 744.2001, F.S., relating to the Office of Public and Professional Guardians.

Section 9: Amends s. 744.1083, F.S., renumbering it as s. 744.2002, F.S., relating to professional guardian registration.

Section 10: Amends s. 744.1085, F.S., renumbering it as s. 744.2003, F.S., relating to regulation of professional guardians; application; bond required; educational requirements.

Section 11: Creates s. 744.2004, F.S., relating to complaints; disciplinary proceedings; penalties; enforcement.

Section 12: Amends s. 744.344, F.S., renumbering it as s. 744.2005, F.S., relating to order of appointment.

Section 13: Amend s. 744.703, F.S., renumbering it as s. 744.2006, F.S., relating to the Office of Public and Professional Guardians; appointment, notification.

Section 14: Renumbers s. 744.704, F.S., as s. 744.2007, F.S.

Section 15: Renumbers s. 744.705, F.S., as s. 744.2008, F.S.

Section 16: Amends s. 744.706, F.S., renumbering it as s. 744.2009, F.S., relating to preparation of budget.

Section 17: Amends s. 744.707, F.S., renumbering it as s. 744.2101, F.S., relating to procedures and rules.

Section 18: Renumbers s. 744.709, F.S., as s. 744.2102, F.S.

Section 19: Amends s. 744.708, F.S., renumbering it as s. 744.2103, F.S., relating to reports and standards.

Section 20: Amends s. 744.7081, F.S., renumbering it as s. 744.2104, F.S., relating to access to records by the Office of Public and Professional Guardians; confidentiality.

Section 21: Amends s. 744.7082, F.S., renumbering it as s. 744.2105, F.S., relating to direct-support organization; definition; use of property; board of directors; audit; dissolution.

Section 22: Amends s. 744.712, F.S., renumbering it as s. 744.2106, F.S., relating to Joining Forces for Public Guardianship grant program; purpose.

Section 23: Amends. 744.713, F.S., renumbering it as s. 744.2107, F.S., relating to program administration; duties of the Office of Public and Professional Guardians.

Section 24: Amends s. 744.714, F.S., renumbering it as s. 744.2108, F.S., relating to eligibility.

Section 25: Amends s. 744.715, F.S., renumbering it as s. 744.2109, F.S., relating to grant application requirements; review criteria; award process.

Section 26: Apeals s. 744.701, F.S., relating to short title.

Section 27: Repeals s. 744.702, F.S., relating to legislative intent.

Section 28: Repeals s. 744.7101, F.S., relating to short title.

Section 29: Repeals s. 744.711, F.S., relating to legislative findings and intent.

Section 30: Amends s. 400.148, F.S., relating to Medicaid "Up-or-Out" Quality of Care Contract Management Program.

Section 31: Amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 32: Amends s. 415.1102, F.S. relating to audlt protection teams.

Section 33: Amends s. 744.331, F.S., relating to procedures to determine incapacity.

Section 34: Amends s. 20.415, F.S., relating to Department of Elderly Affairs; trust funds.

Section 35: Conforms cross-references and makes technical changes.

Section 36: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an indeterminate significant negative fiscal impact on DOEA. DOEA will see increased costs associated with regulating professional guardians. DOEA would need budget and FTEs to perform the duties required by the bill. There would also be increased costs to DOEA's general counsel's office as the professional guardians will be able to challenge decisions by the new OPPG under ch. 120, F.S. The number of wards represented by the 456 guardians is unknown as this time and would need to be considered when estimating the cost of regulation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOEA to promulgate rules relating to OPPG's handling of complaints, disciplinary proceedings, penalties, and enforcement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the bill would require the current SPGO to conduct a complete reorganization, DOEA recommends that the bill's effective date be changed to January 1, 2016.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to guardianship; providing directives
 3 to the Division of Law Revision and Information;
 4 amending s. 744.1012, F.S.; revising legislative
 5 intent; renumbering s. 744.201, F.S.; renumbering and
 6 amending s. 744.202, F.S.; conforming a cross-
 7 reference; renumbering s. 744.2025, F.S.; renumbering
 8 and amending s. 744.7021, F.S.; revising the
 9 responsibilities of the executive director for the
 10 Office of Public and Professional Guardians;
 11 conforming provisions to changes made by the act;
 12 renumbering and amending s. 744.1083, F.S.; removing a
 13 provision authorizing the executive director to
 14 suspend or revoke the registration of a guardian who
 15 commits certain violations; removing the requirement
 16 of written notification to the chief judge of the
 17 judicial circuit upon the executive director's denial,
 18 suspension, or revocation of a registration;
 19 conforming provisions to changes made by the act;
 20 conforming a cross-reference; renumbering and amending
 21 s. 744.1085, F.S.; removing an obsolete provision;
 22 conforming provisions to changes made by the act;
 23 conforming a cross-reference; creating s. 744.2004,
 24 F.S.; requiring the Office of Public and Professional
 25 Guardians to adopt rules; requiring the office, under
 26 certain circumstances, to make a specified

27 recommendation to a court of competent jurisdiction;
 28 renumbering and amending s. 744.344, F.S.; requiring
 29 that a professional guardian appointed by a court to
 30 represent an allegedly incapacitated person be
 31 selected from a registry of professional guardians;
 32 requiring the chief judge of a circuit court to
 33 compile a list of professional guardians by county and
 34 provide the list to the clerk of court in each county;
 35 providing requirements for inclusion in the registry;
 36 providing procedures for a court to appoint a
 37 professional guardian; providing an exception;
 38 requiring the clerk of the court to maintain the
 39 registry and provide the court with the name of a
 40 professional guardian for appointment; renumbering and
 41 amending s. 744.703, F.S.; conforming provisions to
 42 changes made by the act; renumbering ss. 744.704 and
 43 744.705, F.S.; renumbering and amending ss. 744.706
 44 and 744.707, F.S.; conforming provisions to changes
 45 made by the act; renumbering s. 744.709, F.S.;

46 renumbering and amending ss. 744.708, 744.7081, and
 47 744.7082, F.S.; conforming provisions to changes made
 48 by the act; renumbering and amending s. 744.712, F.S.;

49 providing legislative intent; conforming provisions;

50 renumbering and amending ss. 744.713, 744.714, and
 51 744.715, F.S.; conforming provisions to changes made
 52 by the act; repealing s. 744.701, F.S.; relating to a

53 short title; repealing s. 744.702, F.S.; relating to
 54 legislative intent; repealing s. 744.7101, F.S.;
 55 relating to a short title; repealing s. 744.711, F.S.;
 56 relating to legislative findings and intent; amending
 57 ss. 400.148, 744.3135, and 744.331, F.S.; conforming
 58 provisions to changes made by the act; amending ss.
 59 20.415, 415.1102, and 744.524, F.S.; conforming cross-
 60 references; making technical changes; providing an
 61 effective date.

62

63 Be It Enacted by the Legislature of the State of Florida:

64

65 Section 1. The Division of Law Revision and Information is
 66 directed to add ss. 744.1096-744.1098, Florida Statutes, created
 67 by this act, to part I of chapter 744, Florida Statutes.

68 Section 2. The Division of Law Revision and Information is
 69 directed to retitle part II of chapter 744, Florida Statutes,
 70 consisting of ss. 744.2001-744.2109, Florida Statutes, as
 71 "PUBLIC AND PROFESSIONAL GUARDIANS."

72 Section 3. The Division of Law Revision and Information is
 73 directed to remove part IX of chapter 744, Florida Statutes.

74 Section 4. Section 744.1012, Florida Statutes, is amended
 75 to read:

76 744.1012 Legislative intent.—The Legislature finds:

77 (1) That adjudicating a person totally incapacitated and
 78 in need of a guardian deprives such person of all her or his

79 civil and legal rights and that such deprivation may be
80 unnecessary.

81 (2) The Legislature further finds That it is desirable to
82 make available the least restrictive form of guardianship to
83 assist persons who are only partially incapable of caring for
84 their needs and that alternatives to guardianship and less
85 intrusive means of assistance should always be explored,
86 including, but not limited to, guardian advocates, before an
87 individual's rights are removed through an adjudication of
88 incapacity.

89 (3) By recognizing that every individual has unique needs
90 and differing abilities, the Legislature declares that it is the
91 purpose of this act to promote the public welfare by
92 establishing a system that permits incapacitated persons to
93 participate as fully as possible in all decisions affecting
94 them; that assists such persons in meeting the essential
95 requirements for their physical health and safety, in protecting
96 their rights, in managing their financial resources, and in
97 developing or regaining their abilities to the maximum extent
98 possible; and that accomplishes these objectives through
99 providing, in each case, the form of assistance that least
100 interferes with the legal capacity of a person to act in her or
101 his own behalf. This act shall be liberally construed to
102 accomplish this purpose.

103 (4) That private guardianship is inadequate where there is
104 no willing and responsible family member or friend, other

105 person, bank, or corporation available to serve as guardian for
 106 an incapacitated person, and such person does not have adequate
 107 income or wealth for the compensation of a private guardian.

108 (5) The Legislature intends, through the establishment of
 109 the Office of Public and Professional Guardians, to permit the
 110 establishment of offices of public guardians for the purpose of
 111 providing guardianship services for incapacitated persons when
 112 no private guardian is available.

113 (6) That a public guardian be provided only to those
 114 persons whose needs cannot be met through less drastic means of
 115 intervention.

116 Section 5. Section 744.201, Florida Statutes, is
 117 renumbered as section 744.1096, Florida Statutes.

118 Section 6. Section 744.202, Florida Statutes, is
 119 renumbered as section 744.1097, Florida Statutes, and subsection
 120 (3) of that section is amended to read:

121 744.1097 744.202 Venue.-

122 (3) When the residence of an incapacitated person is
 123 changed to another county, the guardian shall petition to have
 124 the venue of the guardianship changed to the county of the
 125 acquired residence, except as provided in s. 744.1098 ~~s.~~
 126 ~~744.2025.~~

127 Section 7. Section 744.2025, Florida Statutes, is
 128 renumbered as section 744.1098, Florida Statutes.

129 Section 8. Section 744.7021, Florida Statutes, is
 130 renumbered as section 744.2001, Florida Statutes, and amended to

131 read:

132 744.2001 744.7021 ~~Statewide Public Guardianship~~ Office of
 133 Public and Professional Guardians.—There is hereby created the
 134 ~~Statewide Public Guardianship~~ Office of Public and Professional
 135 Guardians within the Department of Elderly Affairs.

136 (1) The Secretary of Elderly Affairs shall appoint the
 137 executive director, who shall be the head of the ~~Statewide~~
 138 ~~Public Guardianship~~ Office of Public and Professional Guardians.
 139 The executive director must be a member of The Florida Bar,
 140 knowledgeable of guardianship law and of the social services
 141 available to meet the needs of incapacitated persons, shall
 142 serve on a full-time basis, and shall personally, or through a
 143 representative ~~representatives~~ of the office, carry out the
 144 purposes and functions of the ~~Statewide Public Guardianship~~
 145 Office of Public and Professional Guardians in accordance with
 146 state and federal law. The executive director shall serve at the
 147 pleasure of and report to the secretary.

148 (2) The executive director shall, within available
 149 resources:7

150 (a) Have oversight responsibilities for all public and
 151 professional guardians.

152 (b) Review the standards and criteria for the education,
 153 registration, and certification of public and professional
 154 guardians in Florida.

155 (3) The executive director's oversight responsibilities of
 156 professional guardians shall include, but not be limited to:

157 (a) The development and implementation of a monitoring
 158 tool to be used for regular monitoring activities of
 159 professional guardians related to the management of each ward
 160 and his or her personal affairs. This monitoring may not include
 161 a financial audit as required by the clerk of the circuit court
 162 under s. 744.368.

163 (b) The development of procedures, in consultation with
 164 professional guardianship associations, for the review of an
 165 allegation that a professional guardian has violated an
 166 applicable statute, fiduciary duty, standard of practice, rule,
 167 regulation, or other requirement governing the conduct of
 168 professional guardians.

169 (c) The establishment of disciplinary proceedings,
 170 including the authority to conduct investigations and take
 171 appropriate administrative action pursuant to chapter 120.

172 (d) Assist the chief judge in each judicial circuit to
 173 establish a registry to allow for the appointment of
 174 professional guardians in rotating order as provided in s.
 175 744.2005.

176 (4) The executive director's oversight responsibilities of
 177 public guardians shall include, but not be limited to:

178 ~~The executive director shall~~ review of the current
 179 public guardian programs in Florida and other states.

180 The development ~~executive director,~~ in consultation
 181 with local guardianship offices, of ~~shall develop~~ statewide
 182 performance measures and standards.

183 (c) The ~~executive director shall~~ review of the various
 184 methods of funding public guardianship programs, the kinds of
 185 services being provided by such programs, and the demographics
 186 of the wards. In addition, the executive director shall review
 187 and make recommendations regarding the feasibility of recovering
 188 a portion or all of the costs of providing public guardianship
 189 services from the assets or income of the wards.

190 (d) By January 1 of each year, providing the executive
 191 ~~director shall provide~~ a status report and providing provide
 192 further recommendations to the secretary that address the need
 193 for public guardianship services and related issues.

194 (e) In consultation with the Florida Guardianship
 195 Foundation, the development of a guardianship training program
 196 curriculum that may be offered to all guardians, whether public
 197 or private.

198 (5) The executive director may provide assistance to local
 199 governments or entities in pursuing grant opportunities. The
 200 executive director shall review and make recommendations in the
 201 annual report on the availability and efficacy of seeking
 202 Medicaid matching funds. The executive director shall diligently
 203 seek ways to use existing programs and services to meet the
 204 needs of public wards.

205 ~~(f) The executive director, in consultation with the~~
 206 ~~Florida Guardianship Foundation, shall develop a guardianship~~
 207 ~~training program curriculum that may be offered to all guardians~~
 208 ~~whether public or private.~~

209 ~~(6)(3)~~ The executive director may conduct or contract for
 210 demonstration projects authorized by the Department of Elderly
 211 Affairs, within funds appropriated or through gifts, grants, or
 212 contributions for such purposes, to determine the feasibility or
 213 desirability of new concepts of organization, administration,
 214 financing, or service delivery designed to preserve the civil
 215 and constitutional rights of persons of marginal or diminished
 216 capacity. Any gifts, grants, or contributions for such purposes
 217 shall be deposited in the Department of Elderly Affairs
 218 Administrative Trust Fund.

219 Section 9. Section 744.1083, Florida Statutes, is
 220 renumbered as section 744.2002, Florida Statutes, subsections
 221 (1) through (5) of that section are amended, and subsections (7)
 222 and (10) of that section are republished, to read:

223 744.2002 ~~744.1083~~ Professional guardian registration.—

224 (1) A professional guardian must register with the
 225 ~~Statewide Public Guardianship Office~~ of Public and Professional
 226 Guardians established in part II ~~IX~~ of this chapter.

227 (2) Annual registration shall be made on forms furnished
 228 by the ~~Statewide Public Guardianship Office~~ of Public and
 229 Professional Guardians and accompanied by the applicable
 230 registration fee as determined by rule. The fee may not exceed
 231 \$100.

232 (3) Registration must include the following:

233 (a) Sufficient information to identify the professional
 234 guardian, as follows:

235 1. If the professional guardian is a natural person, the
 236 name, address, date of birth, and employer identification or
 237 social security number of the person.

238 2. If the professional guardian is a partnership or
 239 association, the name, address, and employer identification
 240 number of the entity.

241 (b) Documentation that the bonding and educational
 242 requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

243 (c) Sufficient information to distinguish a guardian
 244 providing guardianship services as a public guardian,
 245 individually, through partnership, corporation, or any other
 246 business organization.

247 (4) Prior to registering a professional guardian, the
 248 ~~Statewide Public Guardianship Office~~ of Public and Professional
 249 Guardians must receive and review copies of the credit and
 250 criminal investigations conducted under s. 744.3135. The credit
 251 and criminal investigations must have been completed within the
 252 previous 2 years.

253 (5) The executive director of the office may deny
 254 registration to a professional guardian if the executive
 255 director determines that the guardian's proposed registration,
 256 including the guardian's credit or criminal investigations,
 257 indicates that registering the professional guardian would
 258 violate any provision of this chapter. ~~If a guardian who is~~
 259 ~~currently registered with the office violates a provision of~~
 260 ~~this chapter, the executive director of the office may suspend~~

261 ~~or revoke the guardian's registration. If the executive director~~
 262 ~~denies registration to a professional guardian or suspends or~~
 263 ~~revokes a professional guardian's registration, the Statewide~~
 264 ~~Public Guardianship Office must send written notification of the~~
 265 ~~denial, suspension, or revocation to the chief judge of each~~
 266 ~~judicial circuit in which the guardian was serving on the day of~~
 267 ~~the office's decision to deny, suspend, or revoke the~~
 268 ~~registration.~~

269 (7) A trust company, a state banking corporation or state
 270 savings association authorized and qualified to exercise
 271 fiduciary powers in this state, or a national banking
 272 association or federal savings and loan association authorized
 273 and qualified to exercise fiduciary powers in this state, may,
 274 but is not required to, register as a professional guardian
 275 under this section. If a trust company, state banking
 276 corporation, state savings association, national banking
 277 association, or federal savings and loan association described
 278 in this subsection elects to register as a professional guardian
 279 under this subsection, the requirements of subsections (3) and
 280 (4) do not apply and the registration must include only the
 281 name, address, and employer identification number of the
 282 registrant, the name and address of its registered agent, if
 283 any, and the documentation described in paragraph (3)(b).

284 (10) A state college or university or an independent
 285 college or university that is located and chartered in Florida,
 286 that is accredited by the Commission on Colleges of the Southern

287 Association of Colleges and Schools or the Accrediting Council
 288 for Independent Colleges and Schools, and that confers degrees
 289 as defined in s. 1005.02(7) may, but is not required to,
 290 register as a professional guardian under this section. If a
 291 state college or university or independent college or university
 292 elects to register as a professional guardian under this
 293 subsection, the requirements of subsections (3) and (4) do not
 294 apply and the registration must include only the name, address,
 295 and employer identification number of the registrant.

296 Section 10. Section 744.1085, Florida Statutes, is
 297 renumbered as section 744.2003, Florida Statutes, subsections
 298 (3), (6), and (9) of that section are amended, and subsection
 299 (8) of that section is republished, to read:

300 744.2003 ~~744.1085~~ Regulation of professional guardians;
 301 application; bond required; educational requirements.—

302 (3) Each professional guardian defined in s. 744.102(17)
 303 and public guardian must receive a minimum of 40 hours of
 304 instruction and training. Each professional guardian must
 305 receive a minimum of 16 hours of continuing education every 2
 306 calendar years after the year in which the initial 40-hour
 307 educational requirement is met. The instruction and education
 308 must be completed through a course approved or offered by the
 309 ~~Statewide Public Guardianship~~ Office of Public and Professional
 310 Guardians. The expenses incurred to satisfy the educational
 311 requirements prescribed in this section may not be paid with the
 312 assets of any ward. This subsection does not apply to any

313 attorney who is licensed to practice law in this state.

314 (6) ~~After July 1, 2005,~~ Each professional guardian is
 315 ~~shall be~~ required to demonstrate competency to act as a
 316 professional guardian by taking an examination approved by the
 317 Department of Elderly Affairs.

318 (a) The Department of Elderly Affairs shall determine the
 319 minimum examination score necessary for passage of guardianship
 320 examinations.

321 (b) The Department of Elderly Affairs shall determine the
 322 procedure for administration of the examination.

323 (c) The Department of Elderly Affairs or its contractor
 324 shall charge an examination fee for the actual costs of the
 325 development and the administration of the examination. The fee
 326 for registration and licensing of a professional guardian may
 327 not, not to exceed \$500.

328 (d) The Department of Elderly Affairs may recognize
 329 passage of a national guardianship examination in lieu of all or
 330 part of the examination approved by the Department of Elderly
 331 Affairs, except that all professional guardians must take and
 332 pass an approved examination section related to Florida law and
 333 procedure.

334 (8) The Department of Elderly Affairs shall waive the
 335 examination requirement in subsection (6) if a professional
 336 guardian can provide:

337 (a) Proof that the guardian has actively acted as a
 338 professional guardian for 5 years or more; and

339 (b) A letter from a circuit judge before whom the
 340 professional guardian practiced at least 1 year which states
 341 that the professional guardian had demonstrated to the court
 342 competency as a professional guardian.

343 (9) ~~After July 1, 2004,~~ The court may ~~shall~~ not appoint
 344 any professional guardian who has not met the requirements of
 345 this section and s. 744.2002 ~~s. 744.1083~~.

346 Section 11. Section 744.2004, Florida Statutes, is created
 347 to read:

348 744.2004 Complaints; disciplinary proceedings; penalties;
 349 enforcement.-

350 (1) The Office of Public and Professional Guardians shall
 351 adopt rules to:

352 (a) Review, and if determined appropriate, investigate an
 353 allegation that a professional guardian has violated an
 354 applicable statute, fiduciary duty, standard of practice, rule,
 355 regulation, or other requirement governing the conduct of
 356 professional guardians.

357 (b) Establish disciplinary proceedings, conduct hearings,
 358 and take administrative action pursuant to chapter 120.
 359 Disciplinary actions include, but are not limited to, requiring
 360 a professional guardian to participate in additional educational
 361 courses provided by the Office of Public and Professional
 362 Guardians, imposing additional monitoring by the office of the
 363 guardianships to which the professional guardian is appointed,
 364 and suspension or revocation of a professional guardian's

365 license.

366 (2) If the office makes a final recommendation for the
 367 suspension or revocation of a professional guardian's license,
 368 it must provide the recommendation to the court of competent
 369 jurisdiction for any guardianship case to which the professional
 370 guardian is currently appointed.

371 Section 12. Section 744.344, Florida Statutes, is
 372 renumbered as section 744.2005, Florida Statutes, and amended to
 373 read:

374 744.2005 744.344 Order of appointment.—

375 (1) A professional guardian appointed by the court to
 376 provide representation of an alleged incapacitated person shall
 377 be selected from a registry of professional guardians.

378 (2) In using a registry:

379 (a) The chief judge of the judicial circuit shall compile
 380 a list of professional guardians by county and provide the list
 381 to the clerk of court in each county. To be included on a
 382 registry, the professional guardian must be certified by the
 383 Office of Public and Professional Guardians.

384 (b) The court shall appoint professional guardians in the
 385 order in which the names appear on the applicable registry,
 386 unless the court makes a finding of good cause on the record for
 387 appointment of a professional guardian out of order. The clerk
 388 of the court shall maintain the registry and provide to the
 389 court the name of the professional guardian for appointment. A
 390 professional guardian not appointed in the order in which her or

391 | his name appears on the list shall remain next in order.

392 | ~~(3)~~~~(1)~~ The court may hear testimony on the question of who
393 | is entitled to preference in the appointment of a guardian. Any
394 | interested person may intervene in the proceedings.

395 | (4) The order appointing a guardian must state the nature
396 | of the guardianship as either plenary or limited. If limited,
397 | the order must state that the guardian may exercise only those
398 | delegable rights which have been removed from the incapacitated
399 | person and specifically delegated to the guardian. The order
400 | shall state the specific powers and duties of the guardian.

401 | ~~(5)~~~~(2)~~ The order appointing a guardian must be consistent
402 | with the incapacitated person's welfare and safety, must be the
403 | least restrictive appropriate alternative, and must reserve to
404 | the incapacitated person the right to make decisions in all
405 | matters commensurate with the person's ability to do so.

406 | ~~(6)~~~~(3)~~ If a petition for appointment of guardian has been
407 | filed, an order appointing a guardian must be issued
408 | contemporaneously with the order adjudicating the person
409 | incapacitated. The order must specify the amount of the bond to
410 | be given by the guardian and must state specifically whether the
411 | guardian must place all, or part, of the property of the ward in
412 | a restricted account in a financial institution designated
413 | pursuant to s. 69.031.

414 | ~~(7)~~~~(4)~~ If a petition for the appointment of a guardian has
415 | not been filed at the time of the hearing on the petition to
416 | determine capacity, the court may appoint an emergency temporary

417 guardian in the manner and for the purposes specified in s.
 418 744.3031.

419 ~~(8)(5)~~ A plenary guardian shall exercise all delegable
 420 rights and powers of the incapacitated person.

421 ~~(9)(6)~~ A person for whom a limited guardian has been
 422 appointed retains all legal rights except those which have been
 423 specifically granted to the guardian in the court's written
 424 order.

425 Section 13. Section 744.703, Florida Statutes, is
 426 renumbered as 744.2006, Florida Statutes, and subsections (1)
 427 and (6) of that section are amended, to read:

428 744.2006 ~~744.703~~ Office of public and professional
 429 guardians ~~guardian~~; appointment, notification.-

430 (1) The executive director of the ~~Statewide Public~~
 431 ~~Guardianship~~ Office of Public and Professional Guardians, after
 432 consultation with the chief judge and other circuit judges
 433 within the judicial circuit and with appropriate advocacy groups
 434 and individuals and organizations who are knowledgeable about
 435 the needs of incapacitated persons, may establish, within a
 436 county in the judicial circuit or within the judicial circuit,
 437 one or more offices of public and professional guardian and if
 438 so established, shall create a list of persons best qualified to
 439 serve as the public guardian, who have been investigated
 440 pursuant to s. 744.3135. The public guardian must have knowledge
 441 of the legal process and knowledge of social services available
 442 to meet the needs of incapacitated persons. The public guardian

443 shall maintain a staff or contract with professionally qualified
 444 individuals to carry out the guardianship functions, including
 445 an attorney who has experience in probate areas and another
 446 person who has a master's degree in social work, or a
 447 gerontologist, psychologist, registered nurse, or nurse
 448 practitioner. A public guardian that is a nonprofit corporate
 449 guardian under s. 744.309(5) must receive tax-exempt status from
 450 the United States Internal Revenue Service.

451 (6) Public guardians who have been previously appointed by
 452 a chief judge prior to the effective date of this act pursuant
 453 to this section may continue in their positions until the
 454 expiration of their term pursuant to their agreement. However,
 455 oversight of all public guardians shall transfer to the
 456 ~~Statewide Public Guardianship~~ Office of Public and Professional
 457 Guardians upon the effective date of this act. The executive
 458 director of the ~~Statewide Public Guardianship~~ Office of Public
 459 and Professional Guardians shall be responsible for all future
 460 appointments of public guardians pursuant to this act.

461 Section 14. Section 744.704, Florida Statutes, is
 462 renumbered as section 744.2007, Florida Statutes.

463 Section 15. Section 744.705, Florida Statutes, is
 464 renumbered as section 744.2008, Florida Statutes.

465 Section 16. Section 744.706, Florida Statutes, is
 466 renumbered as section 744.2009, Florida Statutes, and amended to
 467 read:

468 744.2009 ~~744.706~~ Preparation of budget.—Each public

469 guardian, whether funded in whole or in part by money raised
 470 through local efforts, grants, or any other source or whether
 471 funded in whole or in part by the state, shall prepare a budget
 472 for the operation of the office of public guardian to be
 473 submitted to the ~~Statewide Public Guardianship~~ Office of Public
 474 and Professional Guardians. As appropriate, the ~~Statewide Public~~
 475 ~~Guardianship~~ Office of Public and Professional Guardians will
 476 include such budgetary information in the Department of Elderly
 477 Affairs' legislative budget request. The office of public
 478 guardian shall be operated within the limitations of the General
 479 Appropriations Act and any other funds appropriated by the
 480 Legislature to that particular judicial circuit, subject to the
 481 provisions of chapter 216. The Department of Elderly Affairs
 482 shall make a separate and distinct request for an appropriation
 483 for the ~~Statewide Public Guardianship~~ Office of Public and
 484 Professional Guardians. However, this section may ~~shall~~ not be
 485 construed to preclude the financing of any operations of the
 486 office of the public guardian by moneys raised through local
 487 effort or through the efforts of the ~~Statewide Public~~
 488 ~~Guardianship~~ Office of Public and Professional Guardians.

489 Section 17. Section 744.707, Florida Statutes, is
 490 renumbered as section 744.2101, Florida Statutes, and amended to
 491 read:

492 744.2101 ~~744.707~~ Procedures and rules.—The public
 493 guardian, subject to the oversight of the ~~Statewide Public~~
 494 ~~Guardianship~~ Office of Public and Professional Guardians, is

495 authorized to:

496 (1) Formulate and adopt necessary procedures to assure the
 497 efficient conduct of the affairs of the ward and general
 498 administration of the office and staff.

499 (2) Contract for services necessary to discharge the
 500 duties of the office.

501 (3) Accept the services of volunteer persons or
 502 organizations and provide reimbursement for proper and necessary
 503 expenses.

504 Section 18. Section 744.709, Florida Statutes, is
 505 renumbered as section 744.2102, Florida Statutes.

506 Section 19. Section 744.708, Florida Statutes, is
 507 renumbered as section 744.2103, Florida Statutes, and
 508 subsections (3), (4), (5), and (7) of that section are amended,
 509 to read:

510 744.2103 ~~744.708~~ Reports and standards.-

511 (3) A public guardian shall file an annual report on the
 512 operations of the office of public guardian, in writing, by
 513 September 1 for the preceding fiscal year with the ~~Statewide~~
 514 ~~Public Guardianship~~ Office of Public and Professional Guardians,
 515 which shall have responsibility for supervision of the
 516 operations of the office of public guardian.

517 (4) Within 6 months of his or her appointment as guardian
 518 of a ward, the public guardian shall submit to the clerk of the
 519 court for placement in the ward's guardianship file and to the
 520 executive director of the ~~Statewide Public Guardianship~~ Office

521 of Public and Professional Guardians a report on his or her
 522 efforts to locate a family member or friend, other person, bank,
 523 or corporation to act as guardian of the ward and a report on
 524 the ward's potential to be restored to capacity.

525 (5) (a) Each office of public guardian shall undergo an
 526 independent audit by a qualified certified public accountant at
 527 least once every 2 years. A copy of the audit report shall be
 528 submitted to the ~~Statewide Public Guardianship~~ Office of Public
 529 and Professional Guardians.

530 (b) In addition to regular monitoring activities, the
 531 ~~Statewide Public Guardianship~~ Office of Public and Professional
 532 Guardians shall conduct an investigation into the practices of
 533 each office of public guardian related to the managing of each
 534 ward's personal affairs and property. If feasible, the
 535 investigation shall be conducted in conjunction with the
 536 financial audit of each office of public guardian under
 537 paragraph (a).

538 (7) The ratio for professional staff to wards shall be 1
 539 professional to 40 wards. The ~~Statewide Public Guardianship~~
 540 Office of Public and Professional Guardians may increase or
 541 decrease the ratio after consultation with the local public
 542 guardian and the chief judge of the circuit court. The basis for
 543 the decision to increase or decrease the prescribed ratio must
 544 be included in the annual report to the secretary.

545 Section 20. Section 744.7081, Florida Statutes, is
 546 renumbered as section 744.2104, Florida Statutes, and amended to

547 read:

548 744.2104 ~~744.7081~~ Access to records by the Statewide
 549 ~~Public Guardianship~~ Office of Public and Professional Guardians;
 550 confidentiality.—Notwithstanding any other provision of law to
 551 the contrary, any medical, financial, or mental health records
 552 held by an agency, or the court and its agencies, which are
 553 necessary to evaluate the public guardianship system, to assess
 554 the need for additional public guardianship, or to develop
 555 required reports, shall be provided to the ~~Statewide Public~~
 556 ~~Guardianship~~ Office of Public and Professional Guardians upon
 557 that office's request. Any confidential or exempt information
 558 provided to the ~~Statewide Public Guardianship~~ Office of Public
 559 ~~and Professional Guardians~~ shall continue to be held
 560 confidential or exempt as otherwise provided by law. All records
 561 held by the ~~Statewide Public Guardianship~~ Office of Public and
 562 ~~Professional Guardians~~ relating to the medical, financial, or
 563 mental health of vulnerable adults as defined in chapter 415,
 564 persons with a developmental disability as defined in chapter
 565 393, or persons with a mental illness as defined in chapter 394,
 566 shall be confidential and exempt from s. 119.07(1) and s. 24(a),
 567 Art. I of the State Constitution.

568 Section 21. Section 744.7082, Florida Statutes, is
 569 renumbered as section 744.2105, Florida Statutes, and
 570 subsections (1) through (5) and (8) of that section are amended,
 571 to read:

572 744.2105 ~~744.7082~~ Direct-support organization; definition;

573 use of property; board of directors; audit; dissolution.—

574 (1) DEFINITION.—As used in this section, the term "direct-
 575 support organization" means an organization whose sole purpose
 576 is to support the ~~Statewide Public Guardianship~~ Office of Public
 577 and Professional Guardians and is:

578 (a) A not-for-profit corporation incorporated under
 579 chapter 617 and approved by the Department of State;

580 (b) Organized and operated to conduct programs and
 581 activities; to raise funds; to request and receive grants,
 582 gifts, and bequests of moneys; to acquire, receive, hold,
 583 invest, and administer, in its own name, securities, funds,
 584 objects of value, or other property, real or personal; and to
 585 make expenditures to or for the direct or indirect benefit of
 586 the ~~Statewide Public Guardianship~~ Office of Public and
 587 Professional Guardians; and

588 (c) Determined by the ~~Statewide Public Guardianship~~ Office
 589 of Public and Professional Guardians to be consistent with the
 590 goals of the office, in the best interests of the state, and in
 591 accordance with the adopted goals and mission of the Department
 592 of Elderly Affairs and the ~~Statewide Public Guardianship~~ Office
 593 of Public and Professional Guardians.

594 (2) CONTRACT.—The direct-support organization shall
 595 operate under a written contract with the ~~Statewide Public~~
 596 ~~Guardianship~~ Office of Public and Professional Guardians. The
 597 written contract must provide for:

598 (a) Certification by the ~~Statewide Public Guardianship~~

599 Office of Public and Professional Guardians that the direct-
 600 support organization is complying with the terms of the contract
 601 and is doing so consistent with the goals and purposes of the
 602 office and in the best interests of the state. This
 603 certification must be made annually and reported in the official
 604 minutes of a meeting of the direct-support organization.

605 (b) The reversion of moneys and property held in trust by
 606 the direct-support organization:

607 1. To the ~~Statewide Public Guardianship~~ Office of Public
 608 and Professional Guardians if the direct-support organization is
 609 no longer approved to operate for the office;

610 2. To the ~~Statewide Public Guardianship~~ Office of Public
 611 and Professional Guardians if the direct-support organization
 612 ceases to exist;

613 3. To the Department of Elderly Affairs if the ~~Statewide~~
 614 ~~Public Guardianship~~ Office of Public and Professional Guardians
 615 ceases to exist; or

616 4. To the state if the Department of Elderly Affairs
 617 ceases to exist.

618
 619 The fiscal year of the direct-support organization shall begin
 620 on July 1 of each year and end on June 30 of the following year.

621 (c) The disclosure of the material provisions of the
 622 contract, and the distinction between the ~~Statewide Public~~
 623 ~~Guardianship~~ Office of Public and Professional Guardians and the
 624 direct-support organization, to donors of gifts, contributions,

625 or bequests, including such disclosure on all promotional and
 626 fundraising publications.

627 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs
 628 shall appoint a board of directors for the direct-support
 629 organization from a list of nominees submitted by the executive
 630 director of the ~~Statewide Public Guardianship~~ Office of Public
 631 and Professional Guardians.

632 (4) USE OF PROPERTY.—The Department of Elderly Affairs may
 633 permit, without charge, appropriate use of fixed property and
 634 facilities of the department or the ~~Statewide Public~~
 635 ~~Guardianship~~ Office of Public and Professional Guardians by the
 636 direct-support organization. The department may prescribe any
 637 condition with which the direct-support organization must comply
 638 in order to use fixed property or facilities of the department
 639 or the ~~Statewide Public Guardianship~~ Office of Public and
 640 Professional Guardians.

641 (5) MONEYS.—Any moneys may be held in a separate
 642 depository account in the name of the direct-support
 643 organization and subject to the provisions of the written
 644 contract with the ~~Statewide Public Guardianship~~ Office of Public
 645 and Professional Guardians. Expenditures of the direct-support
 646 organization shall be expressly used to support the ~~Statewide~~
 647 ~~Public Guardianship~~ Office of Public and Professional Guardians.
 648 The expenditures of the direct-support organization may not be
 649 used for the purpose of lobbying as defined in s. 11.045.

650 (8) DISSOLUTION.—~~A After July 1, 2004, any~~ not-for-profit

651 corporation incorporated under chapter 617 that is determined by
 652 a circuit court to be representing itself as a direct-support
 653 organization created under this section, but that does not have
 654 a written contract with the ~~Statewide Public Guardianship~~ Office
 655 of Public and Professional Guardians in compliance with this
 656 section, is considered to meet the grounds for a judicial
 657 dissolution described in s. 617.1430(1)(a). The ~~Statewide Public~~
 658 ~~Guardianship~~ Office of Public and Professional Guardians shall
 659 be the recipient for all assets held by the dissolved
 660 corporation which accrued during the period that the dissolved
 661 corporation represented itself as a direct-support organization
 662 created under this section.

663 Section 22. Section 744.712, Florida Statutes, is
 664 renumbered as section 744.2106, Florida Statutes, and
 665 subsections (1) and (3) are amended, to read:

666 744.2106 ~~744.712~~ Joining Forces for Public Guardianship
 667 grant program; purpose.—The Legislature intends to establish the
 668 Joining Forces for Public Guardianship matching grant program
 669 for the purpose of assisting counties to establish and fund
 670 community-supported public guardianship programs. The Joining
 671 Forces for Public Guardianship matching grant program shall be
 672 established and administered by the ~~Statewide Public~~
 673 ~~Guardianship~~ Office of Public and Professional Guardians within
 674 the Department of Elderly Affairs. The purpose of the program is
 675 to provide startup funding to encourage communities to develop
 676 and administer locally funded and supported public guardianship

677 | programs to address the needs of indigent and incapacitated
 678 | residents.

679 | (1) The ~~Statewide Public Guardianship~~ Office of Public and
 680 | Professional Guardians may distribute the grant funds as
 681 | follows:

682 | (a) As initial startup funding to encourage counties that
 683 | have no office of public guardian to establish an office, or as
 684 | initial startup funding to open an additional office of public
 685 | guardian within a county whose public guardianship needs require
 686 | more than one office of public guardian.

687 | (b) As support funding to operational offices of public
 688 | guardian that demonstrate a necessity for funds to meet the
 689 | public guardianship needs of a particular geographic area in the
 690 | state which the office serves.

691 | (c) To assist counties that have an operating public
 692 | guardianship program but that propose to expand the geographic
 693 | area or population of persons they serve, or to develop and
 694 | administer innovative programs to increase access to public
 695 | guardianship in this state.

696 |
 697 | Notwithstanding this subsection, the executive director of the
 698 | office may award emergency grants if he or she determines that
 699 | the award is in the best interests of public guardianship in
 700 | this state. Before making an emergency grant, the executive
 701 | director must obtain the written approval of the Secretary of
 702 | Elderly Affairs. Subsections (2), (3), and (4) do not apply to

703 the distribution of emergency grant funds.

704 (3) If an applicant is eligible and meets the requirements
 705 to receive grant funds more than once, the ~~Statewide Public~~
 706 ~~Guardianship~~ Office of Public and Professional Guardians shall
 707 award funds to prior awardees in the following manner:

708 (a) In the second year that grant funds are awarded, the
 709 cumulative sum of the award provided to one or more applicants
 710 within the same county may not exceed 75 percent of the total
 711 amount of grant funds awarded within that county in year one.

712 (b) In the third year that grant funds are awarded, the
 713 cumulative sum of the award provided to one or more applicants
 714 within the same county may not exceed 60 percent of the total
 715 amount of grant funds awarded within that county in year one.

716 (c) In the fourth year that grant funds are awarded, the
 717 cumulative sum of the award provided to one or more applicants
 718 within the same county may not exceed 45 percent of the total
 719 amount of grant funds awarded within that county in year one.

720 (d) In the fifth year that grant funds are awarded, the
 721 cumulative sum of the award provided to one or more applicants
 722 within the same county may not exceed 30 percent of the total
 723 amount of grant funds awarded within that county in year one.

724 (e) In the sixth year that grant funds are awarded, the
 725 cumulative sum of the award provided to one or more applicants
 726 within the same county may not exceed 15 percent of the total
 727 amount of grant funds awarded within that county in year one.

728

729 The ~~Statewide Public Guardianship~~ Office of Public and
 730 Professional Guardians may not award grant funds to any
 731 applicant within a county that has received grant funds for more
 732 than 6 years.

733 Section 23. Section 744.713, Florida Statutes, is
 734 renumbered as section 744.2107, Florida Statutes, and amended to
 735 read:

736 744.2107 ~~744.713~~ Program administration; duties of the
 737 ~~Statewide Public Guardianship~~ Office of Public and Professional
 738 Guardians.—The ~~Statewide Public Guardianship~~ Office of Public
 739 and Professional Guardians shall administer the grant program.

740 The office shall:

741 (1) Publicize the availability of grant funds to entities
 742 that may be eligible for the funds.

743 (2) Establish an application process for submitting a
 744 grant proposal.

745 (3) Request, receive, and review proposals from applicants
 746 seeking grant funds.

747 (4) Determine the amount of grant funds each awardee may
 748 receive and award grant funds to applicants.

749 (5) Develop a monitoring process to evaluate grant
 750 awardees, which may include an annual monitoring visit to each
 751 awardee's local office.

752 (6) Ensure that persons or organizations awarded grant
 753 funds meet and adhere to the requirements of this act.

754 Section 24. Section 744.714, Florida Statutes, is

755 | renumbered as section 744.2108, Florida Statutes, and paragraph
 756 | (b) of subsection (1) and paragraph (b) of subsection (2) of
 757 | that section are amended, to read:

758 | 744.2108 ~~744.714~~ Eligibility.—

759 | (1) Any person or organization that has not been awarded a
 760 | grant must meet all of the following conditions to be eligible
 761 | to receive a grant:

762 | (b) The applicant must have already been appointed by, or
 763 | is pending appointment by, the ~~Statewide Public Guardianship~~
 764 | Office of Public and Professional Guardians to become an office
 765 | of public guardian in this state.

766 | (2) Any person or organization that has been awarded a
 767 | grant must meet all of the following conditions to be eligible
 768 | to receive another grant:

769 | (b) The applicant must have been appointed by, or is
 770 | pending reappointment by, the ~~Statewide Public Guardianship~~
 771 | Office of Public and Professional Guardians to be an office of
 772 | public guardian in this state.

773 | Section 25. Section 744.715, Florida Statutes, is
 774 | renumbered as section 744.2109, Florida Statutes, and
 775 | subsections (2) and (4) of that section are amended, to read:

776 | 744.2109 ~~744.715~~ Grant application requirements; review
 777 | criteria; awards process.—Grant applications must be submitted
 778 | to the ~~Statewide Public Guardianship~~ Office of Public and
 779 | Professional Guardians for review and approval.

780 | (2) If the ~~Statewide Public Guardianship~~ Office of Public

781 and Professional Guardians determines that an applicant meets
 782 the requirements for an award of grant funds, the office may
 783 award the applicant any amount of grant funds the executive
 784 director deems appropriate, if the amount awarded meets the
 785 requirements of this act. The office may adopt a rule allocating
 786 the maximum allowable amount of grant funds which may be
 787 expended on any ward.

788 (4)(a) In the first year of the Joining Forces for Public
 789 Guardianship program's existence, the ~~Statewide Public~~
 790 ~~Guardianship~~ Office of Public and Professional Guardians shall
 791 give priority in awarding grant funds to those entities that:

- 792 1. Are operating as appointed offices of public guardians
- 793 in this state;
- 794 2. Meet all of the requirements for being awarded a grant
- 795 under this act; and
- 796 3. Demonstrate a need for grant funds during the current
- 797 fiscal year due to a loss of local funding formerly raised
- 798 through court filing fees.

799 (b) In each fiscal year after the first year that grant
 800 funds are distributed, the ~~Statewide Public Guardianship~~ Office
 801 of Public and Professional Guardians may give priority to
 802 awarding grant funds to those entities that:

- 803 1. Meet all of the requirements of this act for being
- 804 awarded grant funds; and
- 805 2. Submit with their application an agreement or
- 806 confirmation from a local funding source, such as a county,

807 | municipality, or any other public or private organization, that
 808 | the local funding source will contribute matching funds totaling
 809 | an amount equal to or exceeding \$2 for every \$1 of grant funds
 810 | awarded by the office. An entity may submit with its application
 811 | agreements or confirmations from multiple local funding sources
 812 | showing that the local funding sources will pool their
 813 | contributed matching funds to the public guardianship program
 814 | for a combined total of not less than \$2 for every \$1 of grant
 815 | funds awarded. In-kind contributions allowable under this
 816 | section shall be evaluated by the ~~Statewide Public Guardianship~~
 817 | Office of Public and Professional Guardians and may be counted
 818 | as part or all of the local matching funds.

819 | Section 26. Section 744.701, Florida Statutes, is
 820 | repealed.

821 | Section 27. Section 744.702, Florida Statutes, is
 822 | repealed.

823 | Section 28. Section 744.7101, Florida Statutes, is
 824 | repealed.

825 | Section 29. Section 744.711, Florida Statutes, is
 826 | repealed.

827 | Section 30. Subsection (5) of section 400.148, Florida
 828 | Statutes, is amended to read:

829 | 400.148 Medicaid "Up-or-Out" Quality of Care Contract
 830 | Management Program.—

831 | (5) The agency shall, jointly with the ~~Statewide Public~~
 832 | ~~Guardianship~~ Office of Public and Professional Guardians,

833 | develop a system in the pilot project areas to identify Medicaid
 834 | recipients who are residents of a participating nursing home or
 835 | assisted living facility who have diminished ability to make
 836 | their own decisions and who do not have relatives or family
 837 | available to act as guardians in nursing homes listed on the
 838 | Nursing Home Guide Watch List. The agency and the ~~Statewide~~
 839 | ~~Public Guardianship~~ Office of Public and Professional Guardians
 840 | shall give such residents priority for publicly funded
 841 | guardianship services.

842 | Section 31. Subsection (3), paragraph (c) of subsection
 843 | (4), and subsections (5) and (6) of section 744.3135, Florida
 844 | Statutes, are amended to read:

845 | 744.3135 Credit and criminal investigation.—

846 | (3) For professional guardians, the court and the
 847 | ~~Statewide Public Guardianship~~ Office of Public and Professional
 848 | Guardians shall accept the satisfactory completion of a criminal
 849 | history record check by any method described in this subsection.
 850 | A professional guardian satisfies the requirements of this
 851 | section by undergoing an electronic fingerprint criminal history
 852 | record check. A professional guardian may use any electronic
 853 | fingerprinting equipment used for criminal history record
 854 | checks. The ~~Statewide Public Guardianship~~ Office of Public and
 855 | Professional Guardians shall adopt a rule detailing the
 856 | acceptable methods for completing an electronic fingerprint
 857 | criminal history record check under this section. The
 858 | professional guardian shall pay the actual costs incurred by the

859 Federal Bureau of Investigation and the Department of Law
 860 Enforcement for the criminal history record check. The entity
 861 completing the record check must immediately send the results of
 862 the criminal history record check to the clerk of the court and
 863 the ~~Statewide Public Guardianship~~ Office of Public and
 864 Professional Guardians. The clerk of the court shall maintain
 865 the results in the professional guardian's file and shall make
 866 the results available to the court.

867 (4)

868 (c) The Department of Law Enforcement shall search all
 869 arrest fingerprints received under s. 943.051 against the
 870 fingerprints retained in the statewide automated biometric
 871 identification system under paragraph (b). Any arrest record
 872 that is identified with the fingerprints of a person described
 873 in this paragraph must be reported to the clerk of court. The
 874 clerk of court must forward any arrest record received for a
 875 professional guardian to the ~~Statewide Public Guardianship~~
 876 Office of Public and Professional Guardians within 5 days. Each
 877 professional guardian who elects to submit fingerprint
 878 information electronically shall participate in this search
 879 process by paying an annual fee to the ~~Statewide Public~~
 880 ~~Guardianship~~ Office of Public and Professional Guardians of the
 881 Department of Elderly Affairs and by informing the clerk of
 882 court and the ~~Statewide Public Guardianship~~ Office of Public and
 883 Professional Guardians of any change in the status of his or her
 884 guardianship appointment. The amount of the annual fee to be

885 | imposed for performing these searches and the procedures for the
 886 | retention of professional guardian fingerprints and the
 887 | dissemination of search results shall be established by rule of
 888 | the Department of Law Enforcement. At least once every 5 years,
 889 | the ~~Statewide Public Guardianship~~ Office of Public and
 890 | Professional Guardians must request that the Department of Law
 891 | Enforcement forward the fingerprints maintained under this
 892 | section to the Federal Bureau of Investigation.

893 | (5) (a) A professional guardian, and each employee of a
 894 | professional guardian who has a fiduciary responsibility to a
 895 | ward, must complete, at his or her own expense, an investigation
 896 | of his or her credit history before and at least once every 2
 897 | years after the date of the guardian's registration with the
 898 | ~~Statewide Public Guardianship~~ Office of Public and Professional
 899 | Guardians.

900 | (b) The ~~Statewide Public Guardianship~~ Office of Public and
 901 | Professional Guardians shall adopt a rule detailing the
 902 | acceptable methods for completing a credit investigation under
 903 | this section. If appropriate, the ~~Statewide Public Guardianship~~
 904 | Office of Public and Professional Guardians may administer
 905 | credit investigations. If the office chooses to administer the
 906 | credit investigation, the office may adopt a rule setting a fee,
 907 | not to exceed \$25, to reimburse the costs associated with the
 908 | administration of a credit investigation.

909 | (6) The ~~Statewide Public Guardianship~~ Office of Public and
 910 | Professional Guardians may inspect at any time the results of

911 any credit or criminal history record check of a public or
 912 professional guardian conducted under this section. The office
 913 shall maintain copies of the credit or criminal history record
 914 check results in the guardian's registration file. If the
 915 results of a credit or criminal investigation of a public or
 916 professional guardian have not been forwarded to the ~~Statewide~~
 917 ~~Public Guardianship~~ Office of Public and Professional Guardians
 918 by the investigating agency, the clerk of the court shall
 919 forward copies of the results of the investigations to the
 920 office upon receiving them.

921 Section 32. Paragraph (e) of subsection (2) of section
 922 415.1102, Florida Statutes, is amended to read:

923 415.1102 Adult protection teams.—

924 (2) Such teams may be composed of, but need not be limited
 925 to:

926 (e) Public and professional guardians as described in part
 927 II ~~IX~~ of chapter 744.

928 Section 33. Paragraph (d) of subsection (3) of section
 929 744.331, Florida Statutes, is amended to read:

930 744.331 Procedures to determine incapacity.—

931 (3) EXAMINING COMMITTEE.—

932 (d) A member of an examining committee must complete a
 933 minimum of 4 hours of initial training. The person must complete
 934 2 hours of continuing education during each 2-year period after
 935 the initial training. The initial training and continuing
 936 education program must be developed under the supervision of the

937 ~~Statewide Public Guardianship~~ Office of Public and Professional
 938 Guardians, in consultation with the Florida Conference of
 939 Circuit Court Judges; the Elder Law and the Real Property,
 940 Probate and Trust Law sections of The Florida Bar; the Florida
 941 State Guardianship Association; and the Florida Guardianship
 942 Foundation. The court may waive the initial training requirement
 943 for a person who has served for not less than 5 years on
 944 examining committees. If a person wishes to obtain his or her
 945 continuing education on the Internet or by watching a video
 946 course, the person must first obtain the approval of the chief
 947 judge before taking an Internet or video course.

948 Section 34. Paragraph (a) of subsection (1) of section
 949 20.415, Florida Statutes, is amended to read:

950 20.415 Department of Elderly Affairs; trust funds.—The
 951 following trust funds shall be administered by the Department of
 952 Elderly Affairs:

953 (1) Administrative Trust Fund.

954 (a) Funds to be credited to and uses of the trust fund
 955 shall be administered in accordance with ss. 215.32, 744.534,
 956 and 744.2001 ~~744.7021~~.

957 Section 35. Section 744.524, Florida Statutes, is amended
 958 to read:

959 744.524 Termination of guardianship on change of domicile
 960 of resident ward.—When the domicile of a resident ward has
 961 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign
 962 court having jurisdiction over the ward at the ward's new

963 domicile has appointed a guardian and that guardian has
964 qualified and posted a bond in an amount required by the foreign
965 court, the guardian in this state may file her or his final
966 report and close the guardianship in this state. The guardian of
967 the property in this state shall cause a notice to be published
968 once a week for 2 consecutive weeks, in a newspaper of general
969 circulation published in the county, that she or he has filed
970 her or his accounting and will apply for discharge on a day
971 certain and that jurisdiction of the ward will be transferred to
972 the state of foreign jurisdiction. If an objection is filed to
973 the termination of the guardianship in this state, the court
974 shall hear the objection and enter an order either sustaining or
975 overruling the objection. Upon the disposition of all objections
976 filed, or if no objection is filed, final settlement shall be
977 made by the Florida guardian. On proof that the remaining
978 property in the guardianship has been received by the foreign
979 guardian, the guardian of the property in this state shall be
980 discharged. The entry of the order terminating the guardianship
981 in this state shall not exonerate the guardian or the guardian's
982 surety from any liability previously incurred.

983 Section 36. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Children, Families &
 2 Seniors Subcommittee
 3 Representative Ahern offered the following:

Amendment

Remove lines 158-376 and insert:

7 tool to be used for periodic monitoring activities of
 8 professional guardians related to the management of their wards.
 9 This monitoring may not include a financial audit as required by
 10 the clerk of the circuit court under s. 744.368.

11 (b) The development of procedures, in consultation with
 12 professional guardianship associations, for the review of an
 13 allegation that a professional guardian has violated an
 14 applicable statute, fiduciary duty, standard of practice, rule,
 15 regulation, or other requirement governing the conduct of
 16 professional guardians.



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17 (c) The establishment of disciplinary proceedings,
18 including the authority to conduct investigations and take
19 appropriate administrative action pursuant to chapter 120.

20 (d) Assist the chief judge in each judicial circuit to
21 establish a registry to allow for the appointment of
22 professional guardians in rotating order as provided in s.
23 744.2005.

24 (4) The executive director's oversight responsibilities of
25 public guardians shall include, but not be limited to:

26 (a) ~~The executive director shall review~~ of the current
27 public guardian programs in Florida and other states.

28 (b) The development ~~executive director,~~ in consultation
29 with local guardianship offices, of ~~shall develop~~ statewide
30 performance measures and standards.

31 (c) ~~The executive director shall review~~ of the various
32 methods of funding public guardianship programs, the kinds of
33 services being provided by such programs, and the demographics
34 of the wards. In addition, the executive director shall review
35 and make recommendations regarding the feasibility of recovering
36 a portion or all of the costs of providing public guardianship
37 services from the assets or income of the wards.

38 (d) By January 1 of each year, providing ~~the executive~~
39 ~~director shall provide~~ a status report and providing ~~provide~~
40 further recommendations to the secretary that address the need
41 for public guardianship services and related issues.

42 (e) In consultation with the Florida State Guardianship



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43 Association, the development of a guardianship training program
44 curriculum that may be offered to all guardians, whether public
45 or private.

46 (5) The executive director may provide assistance to local
47 governments or entities in pursuing grant opportunities. The
48 executive director shall review and make recommendations in the
49 annual report on the availability and efficacy of seeking
50 Medicaid matching funds. The executive director shall diligently
51 seek ways to use existing programs and services to meet the
52 needs of public wards.

53 ~~(f) The executive director, in consultation with the~~
54 ~~Florida Guardianship Foundation, shall develop a guardianship~~
55 ~~training program curriculum that may be offered to all guardians~~
56 ~~whether public or private.~~

57 Section 8. Section 744.7021, Florida Statutes, is
58 renumbered as section 744.2001, Florida Statutes, and amended to
59 read:

60 744.2001 ~~744.7021~~ ~~Statewide Public Guardianship Office of~~
61 Public and Professional Guardians.—There is hereby created the
62 ~~Statewide Public Guardianship Office of~~ Public and Professional
63 Guardians within the Department of Elderly Affairs.

64 (1) The Secretary of Elderly Affairs shall appoint the
65 executive director, who shall be the head of the ~~Statewide~~
66 ~~Public Guardianship Office of~~ Public and Professional Guardians.
67 The executive director must be a member of The Florida Bar,
68 knowledgeable of guardianship law and of the social services



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69 available to meet the needs of incapacitated persons, shall
70 serve on a full-time basis, and shall personally, or through a
71 representative ~~representatives~~ of the office, carry out the
72 purposes and functions of the ~~Statewide Public Guardianship~~
73 Office of Public and Professional Guardians in accordance with
74 state and federal law. The executive director shall serve at the
75 pleasure of and report to the secretary.

76 (2) The executive director shall, within available
77 resources:

78 (a) Have oversight responsibilities for all public and
79 professional guardians.

80 (b) Review the standards and criteria for the education,
81 registration, and certification of public and professional
82 guardians in Florida.

83 (3) The executive director's oversight responsibilities of
84 professional guardians shall include, but not be limited to:

85 (a) The development and implementation of a monitoring
86 tool to be used for regular monitoring activities of
87 professional guardians related to the management of each ward
88 and his or her personal affairs. This monitoring may not include
89 a financial audit as required by the clerk of the circuit court
90 under s. 744.368.

91 (b) The development of procedures, in consultation with
92 professional guardianship associations, for the review of an
93 allegation that a professional guardian has violated an
94 applicable statute, fiduciary duty, standard of practice, rule,



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95 regulation, or other requirement governing the conduct of
96 professional guardians.

97 (c) The establishment of disciplinary proceedings,
98 including the authority to conduct investigations and take
99 appropriate administrative action pursuant to chapter 120.

100 (d) Assist the chief judge in each judicial circuit to
101 establish a registry to allow for the appointment of
102 professional guardians in rotating order as provided in s.
103 744.2005.

104 (4) The executive director's oversight responsibilities of
105 public guardians shall include, but not be limited to:

106 (a) ~~The executive director shall review~~ of the current
107 public guardian programs in Florida and other states.

108 (b) The development ~~executive director,~~ in consultation
109 with local guardianship offices, of ~~shall develop~~ statewide
110 performance measures and standards.

111 (c) ~~The executive director shall review~~ of the various
112 methods of funding public guardianship programs, the kinds of
113 services being provided by such programs, and the demographics
114 of the wards. In addition, the executive director shall review
115 and make recommendations regarding the feasibility of recovering
116 a portion or all of the costs of providing public guardianship
117 services from the assets or income of the wards.

118 (d) By January 1 of each year, providing ~~the executive~~
119 ~~director shall provide~~ a status report and providing ~~provide~~
120 further recommendations to the secretary that address the need



Amendment No.

121 for public guardianship services and related issues.

122 (e) In consultation with the Florida Guardianship
123 Foundation, the development of a guardianship training program
124 curriculum that may be offered to all guardians, whether public
125 or private.

126 (5) The executive director may provide assistance to local
127 governments or entities in pursuing grant opportunities. The
128 executive director shall review and make recommendations in the
129 annual report on the availability and efficacy of seeking
130 Medicaid matching funds. The executive director shall diligently
131 seek ways to use existing programs and services to meet the
132 needs of public wards.

133 ~~(f) The executive director, in consultation with the~~
134 ~~Florida Guardianship Foundation, shall develop a guardianship~~
135 ~~training program curriculum that may be offered to all guardians~~
136 ~~whether public or private.~~

137 (6)-(3) The executive director may conduct or contract for
138 demonstration projects authorized by the Department of Elderly
139 Affairs, within funds appropriated or through gifts, grants, or
140 contributions for such purposes, to determine the feasibility or
141 desirability of new concepts of organization, administration,
142 financing, or service delivery designed to preserve the civil
143 and constitutional rights of persons of marginal or diminished
144 capacity. Any gifts, grants, or contributions for such purposes
145 shall be deposited in the Department of Elderly Affairs
146 Administrative Trust Fund.



Amendment No.

147 Section 9. Section 744.1083, Florida Statutes, is
148 renumbered as section 744.2002, Florida Statutes, subsections
149 (1) through (5) of that section are amended, and subsections (7)
150 and (10) of that section are republished, to read:

151 744.2002 ~~744.1083~~ Professional guardian registration.—

152 (1) A professional guardian must register with the
153 ~~Statewide Public Guardianship Office~~ Office of Public and Professional
154 Guardians established in part II ~~IX~~ of this chapter.

155 (2) Annual registration shall be made on forms furnished
156 by the ~~Statewide Public Guardianship Office~~ Office of Public and
157 Professional Guardians and accompanied by the applicable
158 registration fee as determined by rule. The fee may not exceed
159 \$100.

160 (3) Registration must include the following:

161 (a) Sufficient information to identify the professional
162 guardian, as follows:

163 1. If the professional guardian is a natural person, the
164 name, address, date of birth, and employer identification or
165 social security number of the person.

166 2. If the professional guardian is a partnership or
167 association, the name, address, and employer identification
168 number of the entity.

169 (b) Documentation that the bonding and educational
170 requirements of s. 744.2003 ~~s. 744.1085~~ have been met.

171 (c) Sufficient information to distinguish a guardian
172 providing guardianship services as a public guardian,



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173 individually, through partnership, corporation, or any other
174 business organization.

175 (4) Prior to registering a professional guardian, the
176 ~~Statewide Public Guardianship Office~~ Office of Public and Professional
177 Guardians must receive and review copies of the credit and
178 criminal investigations conducted under s. 744.3135. The credit
179 and criminal investigations must have been completed within the
180 previous 2 years.

181 (5) The executive director of the office may deny
182 registration to a professional guardian if the executive
183 director determines that the guardian's proposed registration,
184 including the guardian's credit or criminal investigations,
185 indicates that registering the professional guardian would
186 violate any provision of this chapter. ~~If a guardian who is~~
187 ~~currently registered with the office violates a provision of~~
188 ~~this chapter, the executive director of the office may suspend~~
189 ~~or revoke the guardian's registration. If the executive director~~
190 ~~denies registration to a professional guardian or suspends or~~
191 ~~revokes a professional guardian's registration, the Statewide~~
192 ~~Public Guardianship Office must send written notification of the~~
193 ~~denial, suspension, or revocation to the chief judge of each~~
194 ~~judicial circuit in which the guardian was serving on the day of~~
195 ~~the office's decision to deny, suspend, or revoke the~~
196 ~~registration.~~

197 (7) A trust company, a state banking corporation or state
198 savings association authorized and qualified to exercise



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199 fiduciary powers in this state, or a national banking
200 association or federal savings and loan association authorized
201 and qualified to exercise fiduciary powers in this state, may,
202 but is not required to, register as a professional guardian
203 under this section. If a trust company, state banking
204 corporation, state savings association, national banking
205 association, or federal savings and loan association described
206 in this subsection elects to register as a professional guardian
207 under this subsection, the requirements of subsections (3) and
208 (4) do not apply and the registration must include only the
209 name, address, and employer identification number of the
210 registrant, the name and address of its registered agent, if
211 any, and the documentation described in paragraph (3)(b).

212 (10) A state college or university or an independent
213 college or university that is located and chartered in Florida,
214 that is accredited by the Commission on Colleges of the Southern
215 Association of Colleges and Schools or the Accrediting Council
216 for Independent Colleges and Schools, and that confers degrees
217 as defined in s. 1005.02(7) may, but is not required to,
218 register as a professional guardian under this section. If a
219 state college or university or independent college or university
220 elects to register as a professional guardian under this
221 subsection, the requirements of subsections (3) and (4) do not
222 apply and the registration must include only the name, address,
223 and employer identification number of the registrant.



Amendment No.

224 Section 10. Section 744.1085, Florida Statutes, is
225 renumbered as section 744.2003, Florida Statutes, subsections
226 (3), (6), and (9) of that section are amended, and subsection
227 (8) of that section is republished, to read:

228 744.2003 ~~744.1085~~ Regulation of professional guardians;
229 application; bond required; educational requirements.-

230 (3) Each professional guardian defined in s. 744.102(17)
231 and public guardian must receive a minimum of 40 hours of
232 instruction and training. Each professional guardian must
233 receive a minimum of 16 hours of continuing education every 2
234 calendar years after the year in which the initial 40-hour
235 educational requirement is met. The instruction and education
236 must be completed through a course approved or offered by the
237 ~~Statewide Public Guardianship Office~~ of Public and Professional
238 Guardians. The expenses incurred to satisfy the educational
239 requirements prescribed in this section may not be paid with the
240 assets of any ward. This subsection does not apply to any
241 attorney who is licensed to practice law in this state.

242 (6) ~~After July 1, 2005,~~ Each professional guardian is
243 ~~shall be~~ required to demonstrate competency to act as a
244 professional guardian by taking an examination approved by the
245 Department of Elderly Affairs.

246 (a) The Department of Elderly Affairs shall determine the
247 minimum examination score necessary for passage of guardianship
248 examinations.



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249 (b) The Department of Elderly Affairs shall determine the
250 procedure for administration of the examination.

251 (c) The Department of Elderly Affairs or its contractor
252 shall charge an examination fee for the actual costs of the
253 development and the administration of the examination. The fee
254 for registration and certification of a professional guardian
255 may not, ~~not to~~ exceed \$500.

256 (d) The Department of Elderly Affairs may recognize
257 passage of a national guardianship examination in lieu of all or
258 part of the examination approved by the Department of Elderly
259 Affairs, except that all professional guardians must take and
260 pass an approved examination section related to Florida law and
261 procedure.

262 (8) The Department of Elderly Affairs shall waive the
263 examination requirement in subsection (6) if a professional
264 guardian can provide:

265 (a) Proof that the guardian has actively acted as a
266 professional guardian for 5 years or more; and

267 (b) A letter from a circuit judge before whom the
268 professional guardian practiced at least 1 year which states
269 that the professional guardian had demonstrated to the court
270 competency as a professional guardian.

271 (9) ~~After July 1, 2004,~~ The court may ~~shall~~ not appoint
272 any professional guardian who has not met the requirements of
273 this section and s. 744.2002 ~~s. 744.1083.~~



Amendment No.

274 Section 11. Section 744.2004, Florida Statutes, is created
275 to read:

276 744.2004 Complaints; disciplinary proceedings; penalties;
277 enforcement.-

278 (1) The Office of Public and Professional Guardians shall
279 adopt rules to:

280 (a) Review, and if determined appropriate, investigate an
281 allegation that a professional guardian has violated an
282 applicable statute, fiduciary duty, standard of practice, rule,
283 regulation, or other requirement governing the conduct of
284 professional guardians.

285 (b) Establish disciplinary proceedings, conduct hearings,
286 and take administrative action pursuant to chapter 120.
287 Disciplinary actions include, but are not limited to, requiring
288 a professional guardian to participate in additional educational
289 courses provided by the Office of Public and Professional
290 Guardians, imposing additional monitoring by the office of the
291 guardianships to which the professional guardian is appointed,
292 and suspension or revocation of a professional guardian's
293 registration.

294 Section 11. Section 744.2004, Florida Statutes, is created
295 to read:

296 744.2004 Complaints; disciplinary proceedings; penalties;
297 enforcement.-

298 (1) The Office of Public and Professional Guardians shall
299 adopt rules to:



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300 (a) Review, and if determined appropriate, investigate an
301 allegation that a professional guardian has violated an
302 applicable statute, fiduciary duty, standard of practice, rule,
303 regulation, or other requirement governing the conduct of
304 professional guardians.

305 (b) Establish disciplinary proceedings, conduct hearings,
306 and take administrative action pursuant to chapter 120.
307 Disciplinary actions include, but are not limited to, requiring
308 a professional guardian to participate in additional educational
309 courses provided by the Office of Public and Professional
310 Guardians, imposing additional monitoring by the office of the
311 guardianships to which the professional guardian is appointed,
312 and suspension or revocation of a professional guardian's
313 registration.

314 (2) If the office makes a final determination to suspend
315 or revoke the professional guardian's registration, it must
316 provide the determination to the court of competent jurisdiction
317 for any guardianship case to which the professional guardian is
318 currently appointed.

319 Section 12. Section 744.344, Florida Statutes, is
320 renumbered as section 744.2005, Florida Statutes, and amended to
321 read:

322 744.2005 ~~744.344~~ Order of appointment.—

323 (1) A professional guardian appointed by the court to
324 provide representation of a ward shall



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Children, Families &
 2 Seniors Subcommittee
 3 Representative Ahern offered the following:

Amendment (with title amendment)

Remove line 567 and insert:

7 Art I. of the State Constitution. Notwithstanding any other
 8 provision of law to the contrary, the Office of Public and
 9 Professional Guardians is entitled to access all court records
 10 relating to the guardianship cases for which a Professional
 11 Guardian is appointed; the office shall be entitled to access
 12 these records through whatever means or systems are available,
 13 including, but not limited to, electronic access through the
 14 Florida Courts E-Portal.

16 -----
 17 **T I T L E A M E N D M E N T**



Amendment No. 2

18 Remove line 46 and insert:
19 renumbering and amending s. 744.708, F.S.; conforming provisions
20 to changes made by the act; renumbering and amending s.
21 744.7081, F.S.; providing the Office of Public and Professional
22 Guardians with access to court records in cases where
23 professional guardian is appointed; conforming provisions to
24 changes made by the act; renumbering s.



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Children, Families &
 2 Seniors Subcommittee

3 Representative Ahern offered the following:

4

5 **Amendment**

6 Remove lines 940-983 and insert:

7 Probate and Trust Law sections of The Florida Bar; and the
 8 Florida State Guardianship Association; ~~and the Florida~~
 9 ~~Guardianship Foundation~~. The court may waive the initial
 10 training requirement for a person who has served for not less
 11 than 5 years on examining committees. If a person wishes to
 12 obtain his or her continuing education on the Internet or by
 13 watching a video course, the person must first obtain the
 14 approval of the chief judge before taking an Internet or video
 15 course.

16 Section 34. Paragraph (a) of subsection (1) of section
 17 20.415, Florida Statutes, is amended to read:



Amendment No. 3

18 20.415 Department of Elderly Affairs; trust funds.—The
19 following trust funds shall be administered by the Department of
20 Elderly Affairs:

21 (1) Administrative Trust Fund.

22 (a) Funds to be credited to and uses of the trust fund
23 shall be administered in accordance with ss. 215.32, 744.534,
24 and 744.2001 ~~744.7021~~.

25 Section 35. Section 744.524, Florida Statutes, is amended
26 to read:

27 744.524 Termination of guardianship on change of domicile
28 of resident ward.—When the domicile of a resident ward has
29 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign
30 court having jurisdiction over the ward at the ward's new
31 domicile has appointed a guardian and that guardian has
32 qualified and posted a bond in an amount required by the foreign
33 court, the guardian in this state may file her or his final
34 report and close the guardianship in this state. The guardian of
35 the property in this state shall cause a notice to be published
36 once a week for 2 consecutive weeks, in a newspaper of general
37 circulation published in the county, that she or he has filed
38 her or his accounting and will apply for discharge on a day
39 certain and that jurisdiction of the ward will be transferred to
40 the state of foreign jurisdiction. If an objection is filed to
41 the termination of the guardianship in this state, the court
42 shall hear the objection and enter an order either sustaining or
43 overruling the objection. Upon the disposition of all objections



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44 filed, or if no objection is filed, final settlement shall be
45 made by the Florida guardian. On proof that the remaining
46 property in the guardianship has been received by the foreign
47 guardian, the guardian of the property in this state shall be
48 discharged. The entry of the order terminating the guardianship
49 initial training requirement for a person who has served for not
50 less than 5 years on examining committees. If a person wishes to
51 obtain his or her continuing education on the Internet or by
52 watching a video course, the person must first obtain the
53 approval of the chief judge before taking an Internet or video
54 course.

55 Section 34. Paragraph (a) of subsection (1) of section
56 20.415, Florida Statutes, is amended to read:

57 20.415 Department of Elderly Affairs; trust funds.—The
58 following trust funds shall be administered by the Department of
59 Elderly Affairs:

60 (1) Administrative Trust Fund.

61 (a) Funds to be credited to and uses of the trust fund
62 shall be administered in accordance with ss. 215.32, 744.534,
63 and 744.2001 ~~744.7021~~.

64 Section 35. Section 744.524, Florida Statutes, is amended
65 to read:

66 744.524 Termination of guardianship on change of domicile
67 of resident ward.—When the domicile of a resident ward has
68 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign
69 court having jurisdiction over the ward at the ward's new



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70 domicile has appointed a guardian and that guardian has
71 qualified and posted a bond in an amount required by the foreign
72 court, the guardian in this state may file her or his final
73 report and close the guardianship in this state. The guardian of
74 the property in this state shall cause a notice to be published
75 once a week for 2 consecutive weeks, in a newspaper of general
76 circulation published in the county, that she or he has filed
77 her or his accounting and will apply for discharge on a day
78 certain and that jurisdiction of the ward will be transferred to
79 the state of foreign jurisdiction. If an objection is filed to
80 the termination of the guardianship in this state, the court
81 shall hear the objection and enter an order either sustaining or
82 overruling the objection. Upon the disposition of all objections
83 filed, or if no objection is filed, final settlement shall be
84 made by the Florida guardian. On proof that the remaining
85 property in the guardianship has been received by the foreign
86 guardian, the guardian of the property in this state shall be
87 discharged. The entry of the order terminating the guardianship
88 in this state shall not exonerate the guardian or the guardian's
89 surety from any liability previously incurred.

90 Section 36. This act shall take effect January 1, 2016.
91

Workshop Material

CHILD WELFARE & CHILD ABUSE DEATH REVIEW POLICY OPTIONS
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CHILD ABUSE DEATH REVIEW

Issue	Background	Options
1. Data-based, Epidemiological Focus	By requiring review of all deaths called into the child abuse hotline, SB 1666 tripled the number of cases for child abuse death review. SB 1666 also instituted the DCF Critical Incident Rapid Response Team (CIRRT) process, which involves an in-depth root cause analysis of certain deaths exploring primarily processes and policies that contributed to the death.	Refocus the DOH Child Abuse Death Review (CADR) process to emphasize a data-based, epidemiological approach which (1) enables the CADR state committee to analyze a greater amount of data and make sound recommendations and (2) complements the new CIRRT process.
2. State Committee	Statute provides a list of required members for the state committee. However, the statute does not include a limitation on the number of terms that members can serve, leading to challenges in managing membership.	Provide for term limits for members.
3. Local Committees	Local committees are the core of the death review process. They involve staff with the closest contact to the children and families involved in the cases. They identify changes that can be made at the local level. Information they generate is the foundation of the state committee's analysis and recommendations. However, statute provides little guidance about how local committees should operate, leading to concerns about the reliability of their information.	Provide additional structure in statute regarding their membership and process, such as by identifying medical examiners, child protective investigators, and child protection team members as required attendees and specifying responsibilities.
4. Report	Statute requires the CADR state committee to issue a report. However, the report content varies significantly from year to year.	Increase the specificity regarding report content to ensure it includes critical information and enables comparisons across years.

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SB 1666 ISSUES

Issue	Background	Options
<p>4. Medically Complex Children Staffings</p>	<p>SB 1666 requires a staffing to be conducted for every case where medical neglect is alleged. The law names a number of parties which must attend, such as the CPI and staff from the child protection team and the CBC. However, DCF reports that a staffing is not necessary in all cases, such as when medical neglect is determined not to have occurred.</p>	<p>Require staffings only in cases where medical neglect is likely to have occurred.</p>
<p>5. Critical Incident Rapid Review Teams (CIRRT's) for open cases and other deaths</p>	<p>CIRRT's are required for deaths of children with verified reports of abuse or neglect within the previous 12 months. The secretary may request CIRRT reviews for other cases involving serious injury. However, the statute does not explicitly require or allow DCF to use CIRRT's to investigate other deaths, such as those where there is an open investigation of abuse or neglect.</p>	<p>Require CIRRT's for deaths when there is an open investigation of abuse or neglect and allow CIRRT's for other deaths as well.</p>

FLORIDA INSTITUTE FOR CHILD WELFARE RECOMMENDATIONS

Issue	Background	Options
<p>6. Emphasize trauma-informed care in statute</p>	<p>Research indicates that the impact of early trauma can be profound and long-lasting but can be addressed. However, Florida's child welfare system has not fully shifted to incorporate a trauma-informed focus.</p>	<p>Encourage the use of trauma-informed care training, trauma assessments for children (and parents if possible), and trauma-informed services.</p>
<p>7. Require CIRRT advisory committee to meet more frequently than annually</p>	<p>SB 1666 required an advisory committee to review and provide an analysis of CIRRT reports, identifying broad trends and making recommendations for change, but mandated that this only occur annually. This is a lengthy time between reports.</p>	<p>Require a quarterly review and report on findings so that important changes are made more quickly.</p>

MENTAL HEALTH AND SUBSTANCE ABUSE POLICY OPTIONS
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Issue	Background	Options
<p>1. Managing Entity Procurement and Risk</p>	<p>S. 394.9082, F.S., allows only non-profits to serve as managing entities. While some may prefer a provider without a profit motive, this limits the range of available providers. A competitive market is needed to obtain the benefits of an outsourced system. A variety of organizations exist that can coordinate and manage systems of care, including ones specializing in behavioral health. For-profit organizations manage SA/MH block grant funds in some other states.</p> <p>The risk borne by managing entities is limited, which reduces their incentives to provide the most effective and efficient care.</p>	<ol style="list-style-type: none"> 1. Allow other types of managed care organizations to bid to serve as a managing entity if DCF receives only one responsive bid from a non-profit, so that there is some level of competition for these contracts. These could include: <ol style="list-style-type: none"> a. A Medicaid managed care organization, or b. A behavioral health specialty managed care organization. 2. Authorize DCF to place managing entities at greater risk through compensation or rate structuring, such as withholding administrative funds contingent on achieving specified performance standards or imposing penalties.
<p>2. Flexibility in Managing Entities' Contracting</p>	<p>Managing entities need the flexibility to subcontract with providers whose services meet individuals' needs without bureaucratic requirements. Current language in the managing entity statute is obsolete, governing the transition to the system, and current implementing bill language expires at the end of the fiscal year.</p>	<p>Update provisions to clearly provide managing entities the ability to contract as needed with providers without imposing unnecessary requirements, such as competitively bidding all services on a regular timeframe.</p>

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Issue	Background	Options
<p>3. Collection of Data and Performance Measures</p>	<p>DCF's substance abuse/mental health information system was not upgraded in the transition to the managing entity system. It does not provide the detailed client, services, and outcome information needed for DCF to manage an outsourced system.</p>	<ol style="list-style-type: none"> 1. Include specific requirements for DCF's data system capabilities and performance measure collection in statute to spur upgrades within current resources, such as the ability to link individuals served with services rendered to them, the costs of those services, and outcomes achieved. 2. Require reported outcomes data to include all clients served through contracts with managing entities, even if some services are provided to these individuals using other non-DCF/non-match funding. 3. Require use of outcome measures proposed by national organizations such as the National Quality Forum or the National Committee for Quality Assurance. 4. Require performance standards to address, at a minimum: <ol style="list-style-type: none"> a. The improvement in level of functioning for: <ol style="list-style-type: none"> i. Individuals in crisis stabilization units who are on the waitlist for a state treatment facility; ii. Individuals in state treatment facilities on the waitlist for community-based care; iii. Parents or caretakers with child welfare involvement; iv. Individuals with multiple arrests and incarceration as a result of their behavioral health condition; and v. Individuals representing an extraordinary proportion of behavioral health expenditures. b. The proportion of individuals who experience multiple arrests or admissions to acute levels of care within a specified period of time.

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Issue	Background	Options
<p>Collection of Data and Performance Measures, continued</p>		<ul style="list-style-type: none"> c. The proportion of individuals in priority populations who receive care coordination services. d. The number of individuals who apply for Supplemental Security Income (SSI) or Social Security Disability Insurance and the proportion who obtain such benefits within a specified period of time. e. The number of individuals eligible for involuntary outpatient placement and the proportion receiving services through that program.
<p>4. Detail specifications for provision of care coordination</p>	<p>Care coordination helps individuals access a variety of treatment and support services. It assists individuals in navigating through the multiple organizations and jurisdictions with which they're involved and helps them remain in treatment and services that support their recovery.</p>	<ul style="list-style-type: none"> 1. Specify the populations having priority for care coordination services offered by the managing entity, such as individuals: <ul style="list-style-type: none"> a. With multiple arrests, commitments, violations of probation, etc., especially if a danger to the public. b. In CSU's waiting for state treatment facility beds. c. In state treatment facilities waiting for community care. d. With child welfare involvement. e. Who use significant behavioral health resources. 2. Provide for care coordination, to the extent allowed by current resources and as determined by the individual's needs, to include: <ul style="list-style-type: none"> a. Supportive housing. b. Supported employment. c. Family support and education. d. Independent living skill development. e. Peer support. f. Wellness management and self-care. g. Case management. h. Assistance in applying for SSI or SSDI.

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Issue	Background	Options
5. Make changes to existing programs and policies to enhance their operation or use		
<p><i>5a. Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Program</i></p>	<p>The grant program provides funding to counties for initiatives that increase public safety, avert increased spending on criminal and juvenile justice, and improve the accessibility and effectiveness of services. The funding is provided through planning grants and implementation or expansion grants.</p> <p>The grant program's Statewide Grant Review Committee evaluates applications and makes award recommendations to DCF. DCF may then award the grant and enter into a memorandum of understanding with the county.</p> <p>Sequential intercept model mapping identifies points of interception where a new intervention might prevent a person's further involvement in the criminal justice system, such as through law enforcement, emergency services, initial detention, and initial hearings.</p>	<ol style="list-style-type: none"> 1. Add members to the program's Statewide Grant Review Committee and establish it as the policy-setting and review entity for the program. 2. Create a selection committee which is responsible for evaluating the applications and making recommendations to DCF. Selection committees are currently informally established and used by the program's Statewide Grant Review Committee to review and evaluate applications. 3. Allow a not-for-profit community provider which has been duly designated and authorized by the county to apply directly for the grants. This will streamline the grant application process. 4. Eliminate the requirement that an applicant must have previously received a planning grant to be eligible for an implementation or expansion grant. 5. Authorize DCF to require applicants to use sequential intercept model mapping for certain projects.

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Issue	Background	Options
<p><i>5b. Mental Health and Substance Abuse Advance Directives</i></p>	<p>Advance directives allow a person to plan for incapacity by executing a document or orally designating another person to direct the course of his or her medical treatment upon his or her incapacity. Currently, statute allows an individual to establish a health care advance directive for any issue related to his or her physical or mental health. There is, however, no express provision for a mental health and substance abuse advance directive.</p>	<ol style="list-style-type: none"> 1. Establish an advance directive specifically for mental health and substance abuse. 2. Alternatively, require treatment facilities for mental health and substance abuse to inform patients of their ability to create a health care advance directive.
<p><i>5c. Guardian Advocate</i></p>	<p>The Baker Act allows the administrator of a mental health receiving facility to petition the court for the appointment of a guardian advocate for a patient who is incompetent to consent to treatment. The court will appoint a guardian advocate if it finds that a patient is incompetent to consent to treatment and has not been previously adjudicated incapacitated and appointed a guardian.</p>	<p>Authorize family members and interested parties, in addition to the administrator, to petition the court for the appointment of a guardian advocate.</p>

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Issue	Background	Options
<p>6. Require a study of the publicly-funded mental health and substance abuse system to identify changes the Legislature may make over the next two sessions.</p>	<p>Florida's mental health and substance abuse system has undergone structural changes over the last decade, yet it's unclear what improvements have occurred. It remains complex and fragmented, crossing multiple jurisdictions from health care to social services to criminal justice. Services are provided in diverse settings ranging from state hospitals to community providers to jails and sometimes lack effective communication and coordination. Data that could offer insight into system performance lack reliability. While many individuals are getting treatment, living productive and fulfilling lives, some cycle through acute care facilities and jails, consuming enormous public resources without achieving recovery. There continues to be an underlying tension between greater use of managed care approaches proven to deliver care effectively and efficiently and the responsibility to provide a safety net for individuals in need.</p>	<p>Require DCF to contract for a review of Florida's safety-net mental health and substance abuse system and offer recommendations. Require an interim report by November 2015 and a final report by November 2016. Include the following topics:</p> <ol style="list-style-type: none"> 1. Baseline evaluation of the system's current operation and performance. 2. Review of the populations required to be served through the safety-net system and recommendations for prioritizing, revising, or removing them as required populations for services. 3. Payment methodologies that would incentivize earlier intervention, appropriate matching of individuals' needs with services, increased coordination of care, and obtaining increased value for public funds while maintaining the safety-net aspect of the system. 4. Mechanisms for increased coordination and integration of services provided in different settings, such as criminal justice and child welfare, or paid for by other funders, such as Medicaid, through means including but not limited to increased sharing of data regarding individuals' treatment histories and judicial involvement, consistent with federal limitations on such sharing. 5. Strategies to streamline funding for behavioral health services, including how to eliminate unnecessary regulatory and bureaucratic barriers that impede efforts to efficiently deliver behavioral health services.

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Issue	Background	Options
<p>Require a study of the publicly-funded mental health and substance abuse system to identify changes the Legislature may make over the next two sessions, continued</p>		<p>6. Evaluation of the ability of the behavioral health workforce to meet current demand, including consideration of recruitment, retention, turnover, and shortages.</p> <p>7. Options for revising requirements for competency restoration to reduce state funds expended on this function and increase the involvement of individuals with services that will result in stabilization and recovery while maintaining public safety.</p> <p>8. Performance measures that would better assess the contributions of the managing entities in improving the behavioral health of a community, such as in reducing arrests of individuals with mental illness or substance use disorders, reducing readmittances to acute levels of care, and improving individuals' level of functioning.</p> <p>9. Best practices in involuntary commitment in other states, and changes recommended for the Baker and Marchman Acts. To facilitate this, the Supreme Court's Task Force on Substance Abuse and Mental Health Issues in the Courts would be requested to provide a report including its recommendations to the Legislature by November 1, 2015.</p>
<p>7. Remove obsolete provisions</p>	<p>The managing entity statute contains provisions governing the transition to that system. These are now obsolete.</p>	<p>Remove obsolete statutes, such as regarding transfer of department functions and assumption of contracts.</p>