



Health Care Appropriations Subcommittee

January 28, 2016
3:30 PM – 5:30 PM
Webster Hall (212 Knott)

Meeting Packet

REVISED



The Florida House of Representatives

Appropriations Committee

Health Care Appropriations Subcommittee

Steve Crisafulli
Speaker

Matt Hudson
Chair

January 28, 2016

AGENDA
3:30 PM – 5:30 PM
Webster Hall

- I. Call to Order/Roll Call
- II. Chair's Budget Proposal for Fiscal Year 2016-17
- III. PCB HCAS 16-01—Trust Funds
- IV. PCB HCAS 16-02—Medicaid
- V. PCB HCAS 16-03—Alzheimer's Disease Research
- VI. HB 89—Florida Kidcare Program by J. Diaz
- VII. CS/CS/HB 259—Temporary Care of a Minor Child Pursuant to a Power of Attorney by R. Rodrigues
- VIII. CS/HB 403—Guardianship by Ahern
- IX. Closing/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCAS 16-01 Trust Funds
SPONSOR(S): Health Care Appropriations Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|--|--|
| Orig. Comm.: Health Care Appropriations Subcommittee | | Dobson  | Pridgeon  |

SUMMARY ANALYSIS

Legislative review of trust funds is required at least once every four years pursuant to section 215.3208, Florida Statutes. The schedule for review is included in the legislative budget instructions developed pursuant to the requirements of section 216.023, Florida Statutes. A trust fund analysis indicated two trust funds within the Department of Health (DOH) and the Department of Children and Families (DCF) are no longer needed and could be terminated.

This bill terminates the Operations and Maintenance Trust Fund within the DOH and the Working Capital Trust Fund within the DCF. The bill also eliminates statutory references to the Nursing Student Loan Forgiveness Trust Fund as it existed under the DOH as this trust fund was transferred to the Department of Education through Chapter 2012-184, L.O.F.

The effective date of this bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Legislative review of trust funds is required at least once every four years pursuant to section 215.3208, Florida Statutes. The schedule for review is included in the legislative budget instructions developed pursuant to the requirements of section 216.023, Florida Statutes. A trust fund analysis indicated two trust funds are no longer needed and could be terminated: The Operations and Maintenance Trust Fund within the DOH and the Working Capital Trust Fund within the DCF.

The Operations and Maintenance Trust Fund, FLAIR number 20-2-531003 was originally created for the purpose of providing health care services to department clients and other uses as deemed appropriate¹. DOH maintains the fund with receipts from third party payers of health care services such as Medicare and Medicaid.² Going forward, the Department will deposit such receipts in the Federal Grants Trust Fund, which has the same repository and appropriating authority as the Operations and Maintenance Trust Fund.³

In 2012, through Chapter 2012-184, L.O.F., the legislature transferred the Nursing Student Loan Forgiveness Trust Fund, FLAIR number 20-2-505003, from DOH to the Department of Education. However, the legislation did not fully remove all references to the trust fund as it existed under DOH administration.⁴

The Working Capital Trust Fund, FLAIR number 60-2-792014 was originally used to pay for data processing center and information technology costs within the department.⁵ During its use, DCF maintained the fund with receipts from data processing sales and indirect recoveries from within the department as well as from external customers.⁶ In Fiscal Year 2013-2014 the DCF began receiving direct recurring appropriations from General Revenue and the Federal Grants Trust Fund to support data center and information technology operations rather than through indirect assessments and recoveries.

Effect of Proposed Changes

The bill terminates the Operations and Maintenance Trust Fund within the DOH. It also eliminates references to the Operations and Maintenance and Nursing Student Loan Forgiveness Trust Funds in s. 20.435, Florida Statutes.

The bill also terminates the Working Capital Trust Fund within the DCF. It eliminates references to the trust fund in ss. 17.61 and 20.195, F.S. and directs the department on terminating the trust fund.

B. SECTION DIRECTORY:

Section 1: Terminates the Working Capital Trust Fund, transferring the remaining balances and revenues to the Federal Grants Trust Fund.

¹ 20.435(5), F.S.

² *Id.*

³ 20.435(2)(a), F.S.

⁴ 20.435(16), F.S.

⁵ 216.272, F.S.

⁶ 215.31, F.S.

Section 2: Terminates the Operations and Maintenance Trust Fund; transferring remaining balances and revenues to the Federal Grants Trust Fund.

Section 3: Removes the Working Capital Trust fund from the list of trust funds that DCF cannot invest as provided in 17.61, F.S.

Section 4: Repeals Subsection (11) of section 20.195, F.S., removing the Working Capital Trust Fund from the list of funds administered by the DCF.

Section 5: Repeals s. 20.435(5), Florida Statutes, removes the Operations and Maintenance Trust Fund and Nursing Student Loan Forgiveness Trust Fund from the list of Funds administered by the DOH.

Section 6: Renumbers statutory references in s. 215.5601.

Section 7: Repeals 392.69, Florida Statutes.

Section 8: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires all remaining balances in, and all revenues of the Working Capital Trust fund to be transferred to the Federal Grants Trust Fund in DCF. The bill also requires all remaining balances in, and all revenues of the Operations and Maintenance Trust Fund to be transferred to the Federal Grants Trust Fund in DOH. There are no remaining balances left in any of the trust funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply eliminates existing state trust funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to trust funds; terminating the
 3 Working Capital Trust Fund within the Department of
 4 Children and Families and the Operations and
 5 Maintenance Trust Fund within the Department of
 6 Health; providing for the disposition of balances in,
 7 revenues of, and all outstanding appropriations of the
 8 trust funds; prescribing procedures for the
 9 termination of the trust funds; amending ss. 17.61,
 10 20.195, and 20.435, F.S.; conforming provisions and
 11 removing a reference to the Nursing Student Loan
 12 Forgiveness Trust Fund within the Department of
 13 Health; amending s. 215.5601, F.S.; conforming a
 14 cross-reference; repealing s. 392.69, F.S., relating
 15 to appropriations, funding, and additional powers of
 16 the Department of Health regarding tuberculosis
 17 control, to conform; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. (1) The Working Capital Trust Fund within the
 22 Department of Children and Families, FLAIR number 60-2-792014,
 23 is terminated.

24 (2) All current balances remaining in, and all revenues
 25 of, the trust fund shall be transferred to the Federal Grants
 26 Trust Fund within the Department of Children and Families.

27 | (3) The Department of Children and Families shall pay any
 28 | outstanding debts or obligations of the terminated fund as soon
 29 | as practicable, and the Chief Financial Officer shall close out
 30 | and remove the terminated fund from various state accounting
 31 | systems using generally accepted accounting principles
 32 | concerning warrants outstanding, assets, and liabilities.

33 | Section 2. (1) The Operations and Maintenance Trust Fund
 34 | within the Department of Health, FLAIR number 20-2-516003, is
 35 | terminated.

36 | (2) All current balances remaining in, and all revenues
 37 | of, the trust fund shall be transferred to the Federal Grants
 38 | Trust Fund within the Department of Health.

39 | (3) The Department of Health shall pay any outstanding
 40 | debts or obligations of the terminated fund as soon as
 41 | practicable, and the Chief Financial Officer shall close out and
 42 | remove the terminated fund from various accounting systems using
 43 | generally accepted accounting principles concerning warrants
 44 | outstanding, assets, and liabilities.

45 | Section 3. Paragraph (c) of subsection (3) of section
 46 | 17.61, Florida Statutes, is amended to read:

47 | 17.61 Chief Financial Officer; powers and duties in the
 48 | investment of certain funds.—

49 | (3)

50 | (c) Except as provided in this paragraph and except for
 51 | moneys described in paragraph (d), the following agencies may
 52 | not invest trust fund moneys as provided in this section, but

53 shall retain such moneys in their respective trust funds for
 54 investment, with interest appropriated to the General Revenue
 55 Fund, pursuant to s. 17.57:

56 1. The Agency for Health Care Administration, except for
 57 the Tobacco Settlement Trust Fund.

58 2. The Agency for Persons with Disabilities, except for:

59 a. The Federal Grants Trust Fund.

60 b. The Tobacco Settlement Trust Fund.

61 3. The Department of Children and Families, except for:

62 a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.

63 b. The Social Services Block Grant Trust Fund.

64 c. The Tobacco Settlement Trust Fund.

65 ~~d. The Working Capital Trust Fund.~~

66 4. The Department of Corrections.

67 5. The Department of Elderly Affairs, except for:

68 a. The Federal Grants Trust Fund.

69 b. The Tobacco Settlement Trust Fund.

70 6. The Department of Health, except for:

71 a. The Federal Grants Trust Fund.

72 b. The Grants and Donations Trust Fund.

73 c. The Maternal and Child Health Block Grant Trust Fund.

74 d. The Tobacco Settlement Trust Fund.

75 7. The Department of Highway Safety and Motor Vehicles,
 76 only for the Security Deposits Trust Fund.

77 8. The Department of Juvenile Justice.

78 9. The Department of Law Enforcement.

- 79 | 10. The Department of Legal Affairs.
- 80 | 11. The Department of State, only for:
- 81 | a. The Grants and Donations Trust Fund.
- 82 | b. The Records Management Trust Fund.
- 83 | 12. The Department of Economic Opportunity, only for the
- 84 | Economic Development Trust Fund.
- 85 | 13. The Florida Public Service Commission, only for the
- 86 | Florida Public Service Regulatory Trust Fund.
- 87 | 14. The Justice Administrative Commission.
- 88 | 15. The state courts system.

89 | Section 4. Subsection (11) of section 20.195, Florida
 90 | Statutes, is amended to read:

91 | 20.195 Department of Children and Families; trust funds.—
 92 | The following trust funds shall be administered by the
 93 | Department of Children and Families:

94 | ~~(11) Working Capital Trust Fund.~~

95 | ~~(a) Funds to be credited to and uses of the trust fund~~
 96 | ~~shall be administered in accordance with the provisions of s.~~
 97 | ~~215.32.~~

98 | ~~(b) Notwithstanding the provisions of s. 216.301 and~~
 99 | ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
 100 | ~~of any fiscal year shall remain in the trust fund at the end of~~
 101 | ~~the year and shall be available for carrying out the purposes of~~
 102 | ~~the trust fund.~~

103 | Section 5. Subsections (5) and (16) of section 20.435,
 104 | Florida Statutes, are amended to read:

105 20.435 Department of Health; trust funds.—The following
 106 trust funds shall be administered by the Department of Health:

107 ~~(5) Operations and Maintenance Trust Fund.~~

108 ~~(a) Funds to be credited to the trust fund shall consist~~
 109 ~~of receipts from third party payors of health care services such~~
 110 ~~as Medicare and Medicaid. Funds shall be used for the purpose of~~
 111 ~~providing health care services to department clients and for~~
 112 ~~other such purposes as may be appropriate and shall be expended~~
 113 ~~only pursuant to legislative appropriation or an approved~~
 114 ~~amendment to the department's operating budget pursuant to the~~
 115 ~~provisions of chapter 216.~~

116 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
 117 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
 118 ~~of any fiscal year shall remain in the trust fund at the end of~~
 119 ~~the year and shall be available for carrying out the purposes of~~
 120 ~~the trust fund.~~

121 ~~(16) Nursing Student Loan Forgiveness Trust Fund.~~

122 ~~(a) Funds to be credited to and uses of the trust fund~~
 123 ~~shall be administered in accordance with the provisions of s.~~
 124 ~~1009.66.~~

125 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
 126 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
 127 ~~of any fiscal year shall remain in the trust fund at the end of~~
 128 ~~the year and shall be available for carrying out the purposes of~~
 129 ~~the trust fund.~~

130 Section 6. Paragraph (e) of subsection (5) of section

131 | 215.5601, Florida Statutes, is amended to read:

132 | 215.5601 Lawton Chiles Endowment Fund.—

133 | (5) AVAILABILITY OF FUNDS; USES.—

134 | (e) Notwithstanding s. 216.301 and pursuant to s. 216.351,
135 | all unencumbered balances of appropriations from each
136 | department's respective Tobacco Settlement Trust Fund as of June
137 | 30 or undisbursed balances as of September 30 shall revert to
138 | the endowment's principal. Unencumbered balances in the
139 | Biomedical Research Trust Fund shall be managed as provided in
140 | s. 20.435(7)(b) ~~20.435(8)(b)~~.

141 | Section 7. Section 392.69, Florida Statutes, is repealed.

142 | Section 8. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB HCAS 16-01 (2016)

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: Health Care Appropriations
2 Subcommittee
3 Representative Hudson offered the following:

4
5 **Amendment**

6 Remove line 34 and insert:
7 within the Department of Health, FLAIR number 20-2-516004, is

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCAS 16-02 Medicaid
SPONSOR(S): Health Care Appropriations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|----------------------------------|--|
| Orig. Comm.: Health Care Appropriations Subcommittee | | Dobson, Clark <i>M. Clark</i> | Pridgeon <i>[Signature]</i> |

SUMMARY ANALYSIS

The bill conforms statutes to the funding decisions related to the Medicaid Program included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2016-2017. The bill:

- Transfers appeals related to Medicaid programs directly administered by the Agency for Healthcare Administration (AHCA) from the Department of Children and Families (DCF) to AHCA.
- Amends 409.905, F.S., relating to the methodology of calculating payments for Medicaid hospital outpatient reimbursement through a prospective payment methodology; eliminates the requirement that the reimbursement payment system be cost based; specifies dates by which AHCA may correct hospital outpatient rate calculation errors; deletes obsolete requirements pertaining to the previous reimbursement methodology.
- Amends the definition of "Medicaid Payment" for purposes of the Statewide Medicaid Residency Program distribution formula, which pays hospitals for inpatient costs associated with Graduate Medical Education (GME).
- Repeals certain statutes related to reimbursement methods for Disproportionate Share Hospital (DSH) payments; payment methodologies will be delineated via the GAA rather than through statutory formula.
- Allows Broward County's All-Inclusive Care for the Elderly program to serve frail elders in Miami-Dade County.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Medicaid Program

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. AHCA administers the program with financing from federal and state sources. Medicaid enrolls over 3.8 million Floridians and its enrollees make up over 20 percent of Florida's population.¹ Medicaid's estimated expenditure for FY 2015-16 is \$24.9 billion.² The total Medicaid budget for the current state fiscal year is over \$24.5 billion.³ Federal funds comprise 60.5% or \$14.6 billion of this amount.⁴ The state statutory authority for the Medicaid program is contained in ch. 409, F.S.

Medicare and Medicaid account for 58 percent of nationwide hospital care.⁵ Hospitals are not required to participate in Medicaid. However, non-profit hospitals must provide care for Medicare and Medicaid beneficiaries in order to receive a federal tax exemption.⁶ Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services.⁷ The state plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies, including inpatient and outpatient hospital rate charges. The State Plan may be modified via waiver, which permits specific deviations from state or federal requirements detailed in the State Plan.⁸ Florida's State Plan and its attachments provide the methodology for reimbursing hospitals for inpatient and outpatient Medicaid services.⁹

Eligibility and Benefits

Applicants for Medicaid must be United States citizens or qualified noncitizens, must be Florida residents, and must provide social security numbers for data matching. While self-attestation is permitted for a number of data elements on the application, most components are matched through the Federal Data Services Hub.¹⁰ Applicants must agree to cooperate with Child Support Enforcement during the application process.¹¹ In order to qualify for Medicaid, beneficiaries must fall into a benefit category and meet the related age, income and asset requirements. The benefit categories are:

- Aged or disabled individuals receiving social security income,
- Pregnant women
- Children on Medicaid, including their parents, caretakers and children.
- Medically needy individuals with high healthcare costs

¹ Agency for Health Care Administration, Statewide Medicaid Enrollment Report December 2015, available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited December 17, 2015). See also <http://quickfacts.census.gov/qfd/states/12000.html>

² Agency For Health Care Administration Presentation to Senate Health and Human Services Committee October 20, 2015 available at http://www.fdhc.state.fl.us/medicaid/recent_presentations/Florida_Medicaid_to_Senate_HHS_Appropriations_2015-10-20.pdf (last visited December 17, 2015)

³ Chapter 2015-532, Laws of Florida Section 3, human services, lines 220A and 230A.

⁴ *Supra* note 2, at slide 3.

⁵ American Hospital Association, Underpayment by Medicare and Medicaid Fact Sheet 2015, available at <http://www.aha.org/content/15/medicaremedicaidunderpmt.pdf> (last visited December 17, 2015).

⁶ *Id.*

⁷ Medicaid.gov, Medicaid State Plan Amendments, available at <http://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html> (last visited December 17, 2015).

⁸ Medicaid.gov, Medicaid Waivers <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/waivers.html> (last visited 12/17/2015)

⁹ Agency for Health Care Administration, Medicaid State Plan Under Title XIX of the Social Security Act Medical Assistance Program, available at <http://www.fdhc.state.fl.us/Medicaid/stateplan.shtml> (last visited December 17, 2015).

¹⁰ Florida Department of Children and Families, Family-Related Medicaid Programs Fact Sheet, (January 2015), p.3, <http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf> (last visited: December. 17, 2015).

¹¹ *Id.*

- Former foster children up to age 26¹² (Note: there is no income requirement for foster children)
- Foreigners experiencing a medical emergency

| Income Requirements for Florida Medicaid Eligibility ¹³ | | | | | |
|--|----------|-----------|----------------|---------|--------------|
| Children | | | Pregnant Women | Parents | Other Adults |
| Ages 0-1 | Ages 1-5 | Ages 6-18 | | | |
| 206% Federal Poverty Line (FPL) | 140% FPL | 133% FPL | 191% FPL | 30% FPL | 0% FPL |

Federal poverty guidelines are updated every year by the Census Bureau. The guidelines are used to adopt the threshold for eligibility for financial assistance under a number of different social and human service programs, including Medicaid and the Children's Health Insurance Program.

| Federal Poverty Guidelines for 2015 Annual Income (rounded) ¹⁴ | | | | |
|---|--------------------------------------|----------|----------|----------|
| Family Size | 100% | 133% | 150% | 200% |
| 1 | \$11,770 | \$15,654 | \$17,655 | \$23,540 |
| 2 | \$15,930 | \$21,187 | \$23,895 | \$31,860 |
| 3 | \$20,090 | \$26,720 | \$30,135 | \$40,180 |
| 4 | \$24,250 | \$32,252 | \$36,375 | \$48,500 |
| 5 | \$28,410 | \$37,785 | \$42,615 | \$56,820 |
| | Add \$4,160 for each person after 5. | | | |

Federal law establishes minimum Medicaid Benefits, which all states must offer. Such minimum benefits include physician services, hospital services, home health services, and family planning.¹⁵ For children under 21, benefits must include the Early and Periodic Screening, Diagnostic and Treatment services, which correct or ameliorate defects, illnesses and conditions discovered by screening services, consistent with federal law.¹⁶ States can also offer optional benefits, pending federal approval. Florida's optional benefits include prescription drugs, adult dental services, and dialysis.¹⁷

Medicaid Hearings

Pursuant to federal law, AHCA must have a system to conduct Fair Hearings for Medicaid recipients/enrollees whose Medicaid services are denied, suspended or reduced.¹⁸ Currently, The Office of Fair Hearings within the Department of Children and Families (DCF) administers these hearings on behalf of AHCA.¹⁹ The Fair Hearing jurisdiction of DCF's Office of Appeal Hearings covers not only Medicaid services, but other areas within DCF's purview including eligibility and food stamp benefits. DCF rules govern all hearings conducted by the Department.²⁰

In 2014, AHCA began enrolling Medicaid Beneficiaries in managed care plans, pursuant to the Statewide Medicaid Managed Care program.²¹ The program, authorized by a federal Medicaid waiver, permits AHCA to contract with Managed Care Organizations (MCOs) in 11 regions of the state. In turn, the MCOs provide comprehensive Medicaid coverage to most of the state's Medicaid enrollees.²²

¹² <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/medicaid>

¹³ U.S. Centers for Medicare and Medicaid Services, Medicaid.gov, Florida, <http://www.medicaid.gov/medicaid-chip-program-information/by-state/florida.html> (last visited December 21, 2015).

¹⁴ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicaid and CHIP Program Information - 2015 Federal Poverty Level Charts <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/eligibility/downloads/2015-federal-poverty-level-charts.pdf> (last visited December 21, 2015).

¹⁵ Section 409.905, F.S.

¹⁶ See Section 1905 9(r) of the Social Security Act

¹⁷ Section 409.906, F.S.

¹⁸ see 42 CFR ss. 431 and 438

¹⁹ Rule 65-2.042, F.A.C., see also 409.285, F.S.

²⁰ *Supra*, note 19.

²¹ ch. 2011-134, L.O.F

²² See *Generally* s. 409.964, F.S.

Following the 2014 implementation of Statewide Medicaid Managed Care (SMMC), Medicaid hearings no longer revolve around AHCA action. Rather, hearings arise when a Medicaid recipient appeals an MCO's denial, suspension or reduction of Medicaid service.²³ Thus most, if not all, witnesses involved in SMMC Fair Hearings are employees or contractors of the MCO. Likewise, documentary evidence is created by, and in the sole possession of, the MCOs, not AHCA. Consequently, federal law requires the MCO itself (rather than AHCA) be a party to hearings that arise when Medicaid beneficiaries appeal an MCO's denial of Medicaid Services.²⁴ DCF's fair hearings rule pre-dates implementation of SMMC, and conflicts with federal law because it requires AHCA to be the sole party to all Medicaid service related fair hearings—including SMMC fair hearings.²⁵

Florida's current outpatient reimbursement model

Florida's Medicaid program reimburses hospital outpatient services using a flat-rate based on hospital specific costs. This rate is referred to as a "per diem." The state audits hospital cost-reports annually to ensure hospital costs justify the per diem paid. Currently, errors in source data or calculations must be discovered before October 31 in order to be reconciled in the same rate period. If discovered after October 31, must be reconciled in a subsequent period. Several years later, the state can retroactively adjust per-diem rates based on the audit, thereby ensuring payments match actual costs incurred.²⁶ This retroactive payment system creates significant variation in Medicaid payments because reimbursement is tied to costs at specific hospitals.²⁷

Consequently, the Florida Legislature commissioned a 2015 study to explore transitioning from the current method of retroactive outpatient payment, to an Outpatient Prospective Payer System (OPPS).²⁸ Normally, an OPPS uses algorithms to categorize the average cost of services, devices, and supplies associated with providing a specific Medicaid Service.²⁹ The algorithm uses this average cost estimate to assign a relative weight for individual Medicaid services and multiplies the relative weight by a base rate of reimbursement to arrive at a base payment.³⁰ Unlike AHCA's current system, OPPS incentivizes payers and providers to manage overall cost of care because payment does not change based on an individual hospital's cost of providing services.³¹ Instead, a provider hospital's net revenue from Medicaid Outpatient services will depend upon the hospital's costs relative to the statewide average.

Medicaid Residency Program

In 2013, the Legislature created the Statewide Medicaid Residency Program (SMRP) to fund graduate medical education (GME).³² GME is the education and training of physicians following graduation from a medical school in which physicians refine the clinical skills necessary to practice in a specific medical field (surgery, dermatology, family practice, etc.). GME or "residency" programs for allopathic and osteopathic physicians include internships, residency training, and fellowships. These residency programs vary in length from three to seven years.³³ Previously, graduate medical education was reimbursed through hospital inpatient and outpatient reimbursements.

²³ The service may be denied because a peer review physician employed by a Quality Improvement Organization under contract with the MCO found that the Medicaid service requested by the enrollee is not Medically necessary. *Supra 12*

²⁴ 42 CFR s. 438.408 (f)(2).

²⁵ See Rule 65-2.042, F.A.C. (Parties in any Section 120.569, F.S., proceedings are agencies and appellants. Party includes the Agency.)

²⁶ Outpatient Prospective Payment System Design for Medicaid, prepared for the Agency for Healthcare Administration on November 30, 2015 by Navigant Healthcare at 6, on file with Healthcare Appropriations committee staff.

²⁷ See *Id.*, at 15.

²⁸ Chapter 2014-51, Section 3, Laws of Florida.

²⁹ *Id.*

³⁰ *Id.*, at 16

³¹ *Id.*

³² See ch. 2013-48, Laws of Florida

³³ Office of Program and Policy Analysis and Governmental Accountability, Florida's Graduate Medical Education System, February 2014, at 2, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1408rpt.pdf>.

The SMRP defines “Medicaid payment” as payments made to reimburse a hospital for direct inpatient services, as determined by the AHCA.³⁴ Consequently, AHCA must calculate an allocation fraction in accordance with statutory formula on or before September 15 of each year. A hospital’s annual allocation equals the funds appropriated for the SMRP in the GAA multiplied by its allocation fraction. Regardless of the formula, a hospital’s annual allocation may not exceed two-times the average per FTE amount for all hospitals. Any funds beyond this amount must be redistributed to participating hospitals whose annual allocation does not exceed this limit. AHCA must distribute each participating hospital’s annual allocation in four installments on the final business day of each quarter of the state fiscal year.³⁵

Disproportionate Share Hospital Programs

Federal law requires state Medicaid programs to make Disproportionate Share Hospital (DSH) payments to qualifying hospitals that serve a large number of Medicaid recipients and uninsured individuals. Accordingly, the federal government provides an annual limited DSH allotment to each state. States may appropriate these federal funds based on the amount of state dollars appropriated as matching funds for the federal DSH allotment, up to the federal limit. The Legislature distributes DSH funds to each eligible facility in accordance with statutory formula. However, the legislature can make specific allocations which deviate from this formula.³⁶ For states to receive DSH payments, federal law requires states to submit an independent certified audit and an annual report to the secretary of the federal Department of Health and Human Services, describing DSH payments made to each DSH hospital. Florida law requires the AHCA to use audited data from specified years to determine the amount of Medicaid and charity care to be used in calculating DSH payments³⁷.

Program of All-Inclusive Care for the Elderly (PACE)

The Florida PACE project provides alternative, long-term care options for elders who qualify for Medicare and the state Medicaid program. The PACE project was initially authorized in ch. 98-327, L.O.F., and is codified in s. 430.707(2), F.S. The PACE model targets individuals who would otherwise qualify for Medicaid nursing home placement and provides them with a comprehensive array of home and community based services at a cost less than the cost of nursing home care. The PACE project is administered by the Department of Elder Affairs in consultation with the AHCA. In addition to receiving the necessary legislative authority, developing a new PACE organization or expanding an existing program is a lengthy process that includes: identifying a service area, acquiring and renovating a PACE facility and processing the PACE application through the state and the federal review systems. The PACE program for Southeast Florida is located in Broward County, and has 150 slots for serving frail elders who live in Broward.³⁸

Effect of Proposed Changes

Medicaid Hearings

This legislation amends s. 409.285, F.S., giving AHCA statutory authority to hear and render final administrative decisions on appeals relating to Medicaid programs directly administered by the agency, including SMMC appeals. Appeals relating to the Medicaid Program administered by the Agency for Persons with Disabilities and DCF’s own Medicaid eligibility decisions would remain under the jurisdiction of the existing Medicaid Fair Hearings program within DCF. Finally, the bill obligates AHCA to seek federal approval as necessary. Such approval includes seeking amendments to the State Plan and applicable federal waivers.³⁹

Outpatient Reimbursement

The bill amends s. 409.905, F.S., replacing AHCA’s existing per diem and retroactive adjustment fee methodology for Medicaid outpatient care, with a prospective payment system. Under the new system, AHCA

³⁴ *Id.*

³⁵ *Id.*

³⁶ 409.911, F.S. “**Disproportionate share program.**—Subject to specific allocations established within the General Appropriations Act and any limitations established pursuant to chapter 216, the agency shall distribute, pursuant to this section, moneys to hospitals providing a disproportionate share of Medicaid or charity care services by making quarterly Medicaid payments as required.”

³⁷ s. 409.911, F.S.

³⁸ Chapter 2012-33, Laws of Florida.

³⁹ *Supra* note 11, at 2

will calculate reimbursement rates annually; the new rates will go into effect on October 1 during the first year of implementation and on July 1 every year thereafter. The new methodology must function like an OPSS by categorizing the amount and type of services used in outpatient visits, and group together procedures that share similar characteristics and costs. The bill also amends deadlines for discovering errors in cost data to reflect the new implementation schedule, and updates the term "Medicaid payments" to include outpatient services.

Medicaid Residency Program

This legislation amends s. 409.909 to modify the definition of "Medicaid payments" under the SMRP to include outpatient services. This change is necessitated by the proposed transition to a prospective outpatient payment system. This is similar to transition that occurred when Florida moved to inpatient Diagnosis Related Groups.

Disproportionate Share Hospital Program

This bill repeals ss. 409.911, 409.9113, 409.9118, and 409.9119, F.S., which relate to the DSH program and AHCA's obligation to issue DSH payments to different types of hospitals. The parameters for future DSH payments will be prescribed by the GAA, instead of statutory formula. The bill amends ss. 409.915 and 409.9116 to conform with issuance of DSH payments through the GAA instead of the existing statutory framework.

Program of All-Inclusive Care for the Elderly (PACE)

The bill amends Chapter 2012-33, Laws of Florida, and allows the existing PACE organization in Broward County to serve frail elders residing in Miami-Dade County using existing slots.

B. SECTION DIRECTORY:

Section 1: Amends 409.285 relating to Medicaid hearings and appeals.

Section 2: Amends 409.905 relating to Medicaid payment methodology.

Section 3: Amends 409.909 relating to Calculating Medicaid payments.

Section 4: Amends 409.9115 relating to the Disproportionate Share Program for mental health hospitals.

Section 5: Amends 409.9116 relating the Disproportionate Share and Financial Assistance Program for rural hospitals.

Section 6: Amends Section 18 of chapter 2012-33, 2012 Laws of Florida, relating to PACE.

Section 7: Repeals 409.911, 409.9113, 409.9118, and 409.9119 relating to the Disproportionate Share Programs.

Section 8: Amends 409.908 relating to Reimbursement of Medicaid providers.

Section 9: Amends 1009.66 relating to Nursing Student Loan Forgiveness Program.

Section 10: Amends 1009.67 relating to Nursing Scholarship Program.

Section 11: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

\$472,950,551 in federal Medicaid funds will be generated through the implementation of the Hospital Outpatient Prospective Payment System, the GME program, and the DSH programs:

- Hospital Outpatient Services = \$133,680,384
- Graduate Medical Education = \$120,372,730
- Disproportionate Share Hospital Program = \$218,897,437

2. Expenditures:

The House proposed GAA will provide a transfer of 2 full-time equivalent (FTE) positions with associated rate and resources from DCF to AHCA to address the increased workload at AHCA resulting from the transfer of Medicaid related hearings from DCF.

Additionally, the House proposed GAA will contain the following appropriations:

| | FY 2016-17 |
|--|-----------------------|
| HOSPITAL OUTPATIENT SERVICES | |
| General Revenue | \$ 54,136,186 |
| Grants and Donations Trust Fund | \$ 10,617,692 |
| Medical Care Trust Fund | \$ 133,680,384 |
| Public Medical Assistance Trust Fund | \$ 20,768,022 |
| Refugee Assistance Trust Fund | \$ 603,783 |
| Total | \$ 219,806,067 |
| GRADUATE MEDICAL EDUCATION | |
| General Revenue | \$ 37,937,270 |
| Grants and Donations Trust Fund | \$ 38,990,000 |
| Medical Care Trust Fund | \$ 120,372,730 |
| Total | \$ 197,300,000 |
| REGULAR DISPROPORTIONATE SHARE (DSH) | |
| General Revenue | \$ 750,000 |
| Grants and Donations Trust Fund | \$ 87,562,687 |
| Medical Care Trust Fund | \$ 138,712,215 |
| Total | \$ 227,024,902 |
| RURAL HOSPITAL FINANCIAL ASSISTANCE (RURAL DSH) | |
| General Revenue | \$ 1,220,185 |
| Grants and Donations Trust Fund | \$ 3,534,825 |
| Medical Care Trust Fund | \$ 5,505,183 |
| Total | \$ 10,260,193 |
| MENTAL HEALTH HOSPITAL DSH | |
| Medical Care Trust Fund | \$ 72,236,154 |
| Total | \$ 72,236,154 |
| TUBERCULOSIS DSH | |
| Medical Care Trust Fund | \$ 2,443,885 |
| Total | \$ 2,443,885 |
| DISPRPORTIONATE SHARE HOSPITAL (DSH) SUBTOTAL | |
| General Revenue | \$ 1,970,185 |
| Grants and Donations Trust Fund | \$ 91,097,512 |
| Medical Care Trust Fund | \$ 218,897,437 |
| SUBTOTAL | \$ 311,965,134 |
| TOTAL BUDGETARY IMPACT | |
| General Revenue | \$ 94,043,641 |
| Grants and Donations Trust Fund | \$ 140,705,204 |
| Medical Care Trust Fund | \$ 472,950,551 |
| Public Medical Assistance Trust Fund | \$ 20,768,022 |
| Refugee Assistance Trust Fund | \$ 603,783 |
| Total | \$ 729,071,201 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

In order to earn matching federal dollars for the GME and DSH programs, local governments and other local political subdivisions would be required to provide \$130,087,512 in contributions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some private hospitals may see adjustments to the rate of Medicaid reimbursement for outpatient care. The amount and impact of these adjustments will depend on whether hospital costs are above or below the statewide average as calculated by AHCA. Hospitals may decide to purchase software licenses for use with outpatient EAPG. Costs would range from \$4,500 to \$30,000 annually based on hospital size. Additionally, hospitals providing a disproportionate share of Medicaid or charity care services will receive additional reimbursement toward the cost of providing care to uninsured and underinsured individuals. Hospitals eligible for the Statewide Medicaid Residency Program and the Graduate Medical Education Startup Bonus Program will receive additional reimbursement under the parameters of the programs.

D. FISCAL COMMENTS:

The AHCA will distribute a total of \$311,965,134 through the federal Disproportionate Share Program to hospitals providing a disproportionate share of Medicaid or charity care services. Additionally, the AHCA will distribute \$197,300,000 to hospitals eligible for the Statewide Medicaid Residency Program and the Graduate Medical Education Startup Bonus Program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes AHCA to adopt rules as necessary in order to conduct hearings on the SMMC program and related federal waivers. The bill also authorizes AHCA to implement a prospective payment methodology and removes the agency's authority relating to the prior, cost-based reimbursement methodology.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to Medicaid; amending s. 409.285,
 3 F.S.; providing procedures for appeals by applicants
 4 for public assistance based on the agency
 5 administering the Medicaid program; providing
 6 responsibilities of the Agency for Health Care
 7 Administration as the hearing authority for certain
 8 appeals; authorizing the agency to adopt rules;
 9 exempting the rules from certain time requirements
 10 under certain conditions; exempting certain agency
 11 hearings relating to the Medicaid program from uniform
 12 rules of procedure that require such hearings to be
 13 conducted by an administrative law judge; amending s.
 14 409.905, F.S.; revising the methodology for
 15 establishing reimbursement rates for outpatient
 16 hospital services; amending s. 409.909, F.S.; revising
 17 the definition of the term "Medicaid payments" to
 18 include payments for certain outpatient services;
 19 amending chapter 2012-33, Laws of Florida; requiring a
 20 Program of All-Inclusive Care for the Elderly (PACE)
 21 organization in Broward County to serve frail elders
 22 in Miami-Dade County; repealing ss. 409.911, 409.9113,
 23 409.9118, and 409.9119, F.S., relating to the
 24 disproportionate share program; amending ss. 409.908,
 25 409.9115, 409.9116, 1009.66, and 1009.67, F.S.;
 26 conforming references and cross-references to changes

27 made by the act; providing an effective date.

28

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

30

31 Section 1. Section 409.285, Florida Statutes, is amended
32 to read:

33 409.285 Opportunity for hearing and appeal.—

34 (1) If an application for public assistance is not acted
35 upon within a reasonable time after the filing of the
36 application, or is denied in whole or in part, or if an
37 assistance payment is modified or canceled, the applicant or
38 recipient may appeal the decision to the Department of Children
39 and Families in the manner and form prescribed by the
40 department.

41 (a) Appeals related to Medicaid programs directly
42 administered by the Agency for Health Care Administration,
43 including appeals related to the Statewide Medicaid Managed Care
44 program and associated federal waivers, shall be appealed to the
45 Agency for Health Care Administration in the manner and form
46 prescribed by the agency.

47 (b) Medicaid eligibility decisions made by the department
48 shall be appealed to the department.

49 (c) Appeals related to Medicaid programs administered by
50 the Agency for Persons with Disabilities are subject to s.
51 393.125.

52 (2) The hearing authority for appeals heard by the

53 department may be the Secretary of Children and Families, a
54 panel of department officials, or a hearing officer appointed
55 for that purpose. The hearing authority is responsible for a
56 final administrative decision in the name of the department on
57 all issues that have been the subject of a hearing. With regard
58 to the department, the decision of the hearing authority is
59 final and binding. The department is responsible for seeing that
60 the decision is carried out promptly. The hearing authority for
61 appeals heard by the Agency for Health Care Administration may
62 be the Secretary of Health Care Administration, a panel of
63 agency officials, or a hearing officer appointed for that
64 purpose. The hearing authority is responsible for a final
65 administrative decision in the name of the agency on all issues
66 that have been the subject of a hearing. With regard to the
67 agency, the decision of the hearing authority is final and
68 binding. The agency is responsible for seeing that the decision
69 is carried out promptly.

70 (3) The department may adopt rules to administer this
71 section. Rules for the Temporary Assistance for Needy Families
72 block grant programs must be similar to the federal requirements
73 for Medicaid programs. The Agency for Health Care Administration
74 shall seek all federal approvals necessary to implement this
75 section. The agency may adopt rules to administer this section
76 and, notwithstanding s. 120.54(1)(b), has 180 days after final
77 federal approval to provide notice of the proposed rules
78 pursuant to s. 120.54(3).

79 (4) Notwithstanding ss. 120.569 and 120.57, fair hearings
 80 conducted by the Agency for Health Care Administration relating
 81 to the Medicaid program are exempt from the uniform rules of
 82 procedure and need not be conducted by an administrative law
 83 judge assigned by the Division of Administrative Hearings.

84 Section 2. Paragraph (b) of subsection (6) of section
 85 409.905, Florida Statutes, is amended to read:

86 409.905 Mandatory Medicaid services.—The agency may make
 87 payments for the following services, which are required of the
 88 state by Title XIX of the Social Security Act, furnished by
 89 Medicaid providers to recipients who are determined to be
 90 eligible on the dates on which the services were provided. Any
 91 service under this section shall be provided only when medically
 92 necessary and in accordance with state and federal law.

93 Mandatory services rendered by providers in mobile units to
 94 Medicaid recipients may be restricted by the agency. Nothing in
 95 this section shall be construed to prevent or limit the agency
 96 from adjusting fees, reimbursement rates, lengths of stay,
 97 number of visits, number of services, or any other adjustments
 98 necessary to comply with the availability of moneys and any
 99 limitations or directions provided for in the General
 100 Appropriations Act or chapter 216.

101 (6) HOSPITAL OUTPATIENT SERVICES.—

102 (b) The agency shall implement a prospective payment
 103 methodology for establishing ~~base~~ reimbursement rates for
 104 outpatient hospital services ~~for each hospital based on~~

105 ~~allowable costs, as defined by the agency.~~ Rates shall be
 106 calculated annually and take effect October 1, 2016, and July 1
 107 of each year thereafter. The methodology shall categorize the
 108 amount and type of services used in various ambulatory visits
 109 which group together procedures and medical visits that share
 110 similar characteristics and resource utilization ~~based on the~~
 111 ~~most recent complete and accurate cost report submitted by each~~
 112 ~~hospital.~~

113 1. Adjustments may not be made to the rates after October
 114 31, 2016, or after July 31 of each the state fiscal year
 115 thereafter in which the rates are in take effect, ~~except for~~
 116 ~~cases of insufficient collections of intergovernmental transfers~~
 117 ~~authorized under s. 409.908(1) or the General Appropriations~~
 118 ~~Act. In such cases, the agency shall submit a budget amendment~~
 119 ~~or amendments under chapter 216 requesting approval of rate~~
 120 ~~reductions by amounts necessary for the aggregate reduction to~~
 121 ~~equal the dollar amount of intergovernmental transfers not~~
 122 ~~collected and the corresponding federal match. Notwithstanding~~
 123 ~~the \$1 million limitation on increases to an approved operating~~
 124 ~~budget under ss. 216.181(11) and 216.292(3), a budget amendment~~
 125 ~~exceeding that dollar amount is subject to notice and objection~~
 126 ~~procedures set forth in s. 216.177.~~

127 2. Errors in source data or calculations discovered after
 128 October 31, 2016, or after July 31 of each state fiscal year
 129 thereafter must be reconciled in a subsequent rate period.
 130 However, the agency may not make any adjustment to a hospital's

131 reimbursement more than 5 years after a hospital is notified of
 132 an audited rate established by the agency. The prohibition
 133 against adjustments more than 5 years after notification is
 134 remedial and applies to actions by providers involving Medicaid
 135 claims for hospital services. Hospital reimbursement is subject
 136 to such limits or ceilings as may be established in law or
 137 described in the agency's hospital reimbursement plan. Specific
 138 exemptions to the limits or ceilings may be provided in the
 139 General Appropriations Act.

140 Section 3. Paragraph (b) of subsection (2) of section
 141 409.909, Florida Statutes, is amended to read:

142 409.909 Statewide Medicaid Residency Program.—

143 (2) On or before September 15 of each year, the agency
 144 shall calculate an allocation fraction to be used for
 145 distributing funds to participating hospitals. On or before the
 146 final business day of each quarter of a state fiscal year, the
 147 agency shall distribute to each participating hospital one-
 148 fourth of that hospital's annual allocation calculated under
 149 subsection (4). The allocation fraction for each participating
 150 hospital is based on the hospital's number of full-time
 151 equivalent residents and the amount of its Medicaid payments. As
 152 used in this section, the term:

153 (b) "Medicaid payments" means the estimated total payments
 154 for reimbursing a hospital for direct inpatient and outpatient
 155 services for the fiscal year in which the allocation fraction is
 156 calculated based on the hospital inpatient appropriation and

157 outpatient appropriation and the parameters for the inpatient
 158 diagnosis-related group base rate, including applicable
 159 intergovernmental transfers, specified in the General
 160 Appropriations Act, as determined by the agency.

161 Section 4. Section 409.9115, Florida Statutes, is amended
 162 to read:

163 409.9115 Disproportionate share program for mental health
 164 hospitals.—The Agency for Health Care Administration shall
 165 design and implement a system of making mental health
 166 disproportionate share payments to hospitals that qualify for
 167 disproportionate share payments ~~under s. 409.911~~. This system of
 168 payments shall conform with federal requirements and shall
 169 distribute funds in each fiscal year for which an appropriation
 170 is made by making quarterly Medicaid payments. Notwithstanding
 171 s. 409.915, counties are exempt from contributing toward the
 172 cost of this special reimbursement for patients.

173 (1) The following formula shall be used by the agency to
 174 calculate the total amount earned for hospitals that participate
 175 in the mental health disproportionate share program:

$$TAP = (DSH/TDSH) \times TA$$

176 Where:

177 TAP = total additional payment for a mental health
 178 hospital.

179 DSH = total amount earned by a mental health hospital under
 180 the General Appropriations Act ~~s. 409.911~~.

181 TDSH = sum of total amount earned by each hospital that
 182

183 participates in the mental health hospital disproportionate
 184 share program.

185 TA = total appropriation for the mental health hospital
 186 disproportionate share program.

187 (2) In order to receive payments under this section, a
 188 hospital must participate in the Florida Title XIX program and
 189 must:

190 (a) Agree to serve all individuals referred by the agency
 191 who require inpatient psychiatric services, regardless of
 192 ability to pay.

193 (b) Be certified or certifiable to be a provider of Title
 194 XVIII services.

195 (c) Receive all of its inpatient clients from admissions
 196 governed by the Baker Act as specified in chapter 394.

197 Section 5. Section 409.9116, Florida Statutes, is amended
 198 to read:

199 409.9116 Disproportionate share/financial assistance
 200 program for rural hospitals. ~~In addition to the payments made~~
 201 ~~under s. 409.911,~~ The Agency for Health Care Administration
 202 shall administer a federally matched disproportionate share
 203 program and a state-funded financial assistance program for
 204 statutory rural hospitals. The agency shall make
 205 disproportionate share payments to statutory rural hospitals
 206 that qualify for such payments and financial assistance payments
 207 to statutory rural hospitals that do not qualify for
 208 disproportionate share payments. The disproportionate share

209 program payments shall be limited by and conform with federal
 210 requirements. Funds shall be distributed quarterly in each
 211 fiscal year for which an appropriation is made. Notwithstanding
 212 the provisions of s. 409.915, counties are exempt from
 213 contributing toward the cost of this special reimbursement for
 214 hospitals serving a disproportionate share of low-income
 215 patients.

216 (1) The following formula shall be used by the agency to
 217 calculate the total amount earned for hospitals that participate
 218 in the rural hospital disproportionate share program or the
 219 financial assistance program:

$$220 \quad \text{TAERH} = (\text{CCD} + \text{MDD}) / \text{TPD}$$

221 Where:

222 CCD = total charity care-other, plus charity care-Hill-
 223 Burton, minus 50 percent of unrestricted tax revenue from local
 224 governments, and restricted funds for indigent care, divided by
 225 gross revenue per adjusted patient day; however, if CCD is less
 226 than zero, then zero shall be used for CCD.

227 MDD = Medicaid inpatient days plus Medicaid HMO inpatient
 228 days.

229 TPD = total inpatient days.

230 TAERH = total amount earned by each rural hospital.

231 In computing the total amount earned by each rural hospital, the
 232 agency must use the average of the 3 most recent years of actual
 233 data reported in accordance with s. 408.061(4). The agency shall
 234 provide a preliminary estimate of the payments under the rural

235 disproportionate share and financial assistance programs to the
 236 rural hospitals by August 31 of each state fiscal year for
 237 review. Each rural hospital shall have 30 days to review the
 238 preliminary estimates of payments and report any errors to the
 239 agency. The agency shall make any corrections deemed necessary
 240 and compute the rural disproportionate share and financial
 241 assistance program payments.

242 (2) The agency shall use the following formula for
 243 distribution of funds for the disproportionate share/financial
 244 assistance program for rural hospitals.

245 (a) The agency shall first determine a preliminary payment
 246 amount for each rural hospital by allocating all available state
 247 funds using the following formula:

$$248 \quad \text{PDAER} = (\text{TAERH} \times \text{TARH}) / \text{STAERH}$$

249 Where:

250 PDAER = preliminary distribution amount for each rural
 251 hospital.

252 TAERH = total amount earned by each rural hospital.

253 TARH = total amount appropriated or distributed under this
 254 section.

255 STAERH = sum of total amount earned by each rural hospital.

256 (b) Federal matching funds for the disproportionate share
 257 program shall then be calculated for those hospitals that
 258 qualify for disproportionate share in paragraph (a).

259 (c) The state-funds-only payment amount shall then be
 260 calculated for each hospital using the formula:

261 SFOER = Maximum value of (1) SFOL - PDAER or (2) 0

262 Where:

263 SFOER = state-funds-only payment amount for each rural
264 hospital.

265 SFOL = state-funds-only payment level, which is set at 4
266 percent of TARH.

267 In calculating the SFOER, PDAER includes federal matching funds
268 from paragraph (b).

269 (d) The adjusted total amount allocated to the rural
270 disproportionate share program shall then be calculated using
271 the following formula:

272
$$ATARH = (TARH - SSFOER)$$

273 Where:

274 ATARH = adjusted total amount appropriated or distributed
275 under this section.

276 SSFOER = sum of the state-funds-only payment amount
277 calculated under paragraph (c) for all rural hospitals.

278 (e) The distribution of the adjusted total amount of rural
279 disproportionate share hospital funds shall then be calculated
280 using the following formula:

281
$$DAERH = [(TAERH \times ATARH) / STAERH]$$

282 Where:

283 DAERH = distribution amount for each rural hospital.

284 (f) Federal matching funds for the disproportionate share
285 program shall then be calculated for those hospitals that
286 qualify for disproportionate share in paragraph (e).

287 (g) State-funds-only payment amounts calculated under
 288 paragraph (c) and corresponding federal matching funds are then
 289 added to the results of paragraph (f) to determine the total
 290 distribution amount for each rural hospital.

291 (3) The Agency for Health Care Administration may
 292 recommend to the Legislature a formula to be used in subsequent
 293 fiscal years to distribute funds appropriated for this section
 294 that includes charity care, uncompensated care to medically
 295 indigent patients, and Medicaid inpatient days.

296 (4) In the event that federal matching funds for the rural
 297 hospital disproportionate share program are not available, state
 298 matching funds appropriated for the program may be utilized for
 299 the Rural Hospital Financial Assistance Program and shall be
 300 allocated to rural hospitals based on the formulas in
 301 subsections (1) and (2).

302 (5) In order to receive payments under this section, a
 303 hospital must be a rural hospital as defined in s. 395.602 and
 304 must meet the following additional requirements:

305 (a) Agree to conform to all agency requirements to ensure
 306 high quality in the provision of services, including criteria
 307 adopted by agency rule concerning staffing ratios, medical
 308 records, standards of care, equipment, space, and such other
 309 standards and criteria as the agency deems appropriate as
 310 specified by rule.

311 (b) Agree to accept all patients, regardless of ability to
 312 pay, on a functional space-available basis.

313 (c) Agree to provide backup and referral services to the
314 county public health departments and other low-income providers
315 within the hospital's service area, including the development of
316 written agreements between these organizations and the hospital.

317 (d) For any hospital owned by a county government which is
318 leased to a management company, agree to submit on a quarterly
319 basis a report to the agency, in a format specified by the
320 agency, which provides a specific accounting of how all funds
321 dispersed under this act are spent.

322 (6) This section applies only to hospitals that were
323 defined as statutory rural hospitals, or their successor-in-
324 interest hospital, prior to January 1, 2001. Any additional
325 hospital that is defined as a statutory rural hospital, or its
326 successor-in-interest hospital, on or after January 1, 2001, is
327 not eligible for programs under this section unless additional
328 funds are appropriated each fiscal year specifically to the
329 rural hospital disproportionate share and financial assistance
330 programs in an amount necessary to prevent any hospital, or its
331 successor-in-interest hospital, eligible for the programs prior
332 to January 1, 2001, from incurring a reduction in payments
333 because of the eligibility of an additional hospital to
334 participate in the programs. A hospital, or its successor-in-
335 interest hospital, which received funds pursuant to this section
336 before January 1, 2001, and which qualifies under s.
337 395.602(2)(e), shall be included in the programs under this
338 section and is not required to seek additional appropriations

339 | under this subsection.

340 | Section 6. Section 18 of chapter 2012-33, Laws of Florida,
341 | is amended to read:

342 | Section 18. Notwithstanding s. 430.707, Florida Statutes,
343 | and subject to federal approval of an additional site for the
344 | Program of All-Inclusive Care for the Elderly (PACE), the Agency
345 | for Health Care Administration shall contract with a current
346 | PACE organization authorized to provide PACE services in
347 | Southeast Florida to develop and operate a PACE program in
348 | Broward County to serve frail elders who reside in Broward
349 | County or Miami-Dade County. The organization shall be exempt
350 | from chapter 641, Florida Statutes. The agency, in consultation
351 | with the Department of Elderly Affairs and subject to an
352 | appropriation, shall approve up to 150 initial enrollee slots in
353 | the Broward program established by the organization.

354 | Section 7. Sections 409.911, 409.9113, 409.9118, and
355 | 409.9119, Florida Statutes, are repealed.

356 | Section 8. Paragraph (d) of subsection (1) of section
357 | 409.908, Florida Statutes, is amended to read:

358 | 409.908 Reimbursement of Medicaid providers.—Subject to
359 | specific appropriations, the agency shall reimburse Medicaid
360 | providers, in accordance with state and federal law, according
361 | to methodologies set forth in the rules of the agency and in
362 | policy manuals and handbooks incorporated by reference therein.
363 | These methodologies may include fee schedules, reimbursement
364 | methods based on cost reporting, negotiated fees, competitive

365 bidding pursuant to s. 287.057, and other mechanisms the agency
 366 considers efficient and effective for purchasing services or
 367 goods on behalf of recipients. If a provider is reimbursed based
 368 on cost reporting and submits a cost report late and that cost
 369 report would have been used to set a lower reimbursement rate
 370 for a rate semester, then the provider's rate for that semester
 371 shall be retroactively calculated using the new cost report, and
 372 full payment at the recalculated rate shall be effected
 373 retroactively. Medicare-granted extensions for filing cost
 374 reports, if applicable, shall also apply to Medicaid cost
 375 reports. Payment for Medicaid compensable services made on
 376 behalf of Medicaid eligible persons is subject to the
 377 availability of moneys and any limitations or directions
 378 provided for in the General Appropriations Act or chapter 216.
 379 Further, nothing in this section shall be construed to prevent
 380 or limit the agency from adjusting fees, reimbursement rates,
 381 lengths of stay, number of visits, or number of services, or
 382 making any other adjustments necessary to comply with the
 383 availability of moneys and any limitations or directions
 384 provided for in the General Appropriations Act, provided the
 385 adjustment is consistent with legislative intent.

386 (1) Reimbursement to hospitals licensed under part I of
 387 chapter 395 must be made prospectively or on the basis of
 388 negotiation.

389 ~~(d) Hospitals that provide services to a disproportionate~~
 390 ~~share of low income Medicaid recipients, or that participate in~~

391 ~~the regional perinatal intensive care center program under~~
 392 ~~chapter 383, or that participate in the statutory teaching~~
 393 ~~hospital disproportionate share program may receive additional~~
 394 ~~reimbursement. The total amount of payment for disproportionate~~
 395 ~~share hospitals shall be fixed by the General Appropriations~~
 396 ~~Act. The computation of these payments must be made in~~
 397 ~~compliance with all federal regulations and the methodologies~~
 398 ~~described in ss. 409.911 and 409.9113.~~

399 Section 9. Subsection (7) of section 1009.66, Florida
 400 Statutes, is amended to read:

401 1009.66 Nursing Student Loan Forgiveness Program.—

402 (7) Funds contained in the Nursing Student Loan
 403 Forgiveness Trust Fund which are to be used for loan forgiveness
 404 for those nurses employed by hospitals, birth centers, and
 405 nursing homes must be matched on a dollar-for-dollar basis by
 406 contributions from the employing institutions, except that this
 407 provision shall not apply to state-operated medical and health
 408 care facilities, public schools, county health departments,
 409 federally sponsored community health centers, teaching hospitals
 410 as defined in s. 408.07, or family practice teaching hospitals
 411 as defined in s. 395.805, ~~or specialty hospitals for children as~~
 412 ~~used in s. 409.9119.~~ An estimate of the annual trust fund
 413 dollars shall be made at the beginning of the fiscal year based
 414 on historic expenditures from the trust fund. Applicant requests
 415 shall be reviewed on a quarterly basis, and applicant awards
 416 shall be based on the following priority of employer until all

417 such estimated trust funds are awarded: state-operated medical
 418 and health care facilities; public schools; county health
 419 departments; federally sponsored community health centers;
 420 teaching hospitals as defined in s. 408.07; family practice
 421 teaching hospitals as defined in s. 395.805; ~~specialty hospitals~~
 422 ~~for children as used in s. 409.9119~~; and other hospitals, birth
 423 centers, and nursing homes.

424 Section 10. Paragraph (b) of subsection (4) of section
 425 1009.67, Florida Statutes, is amended to read:

426 1009.67 Nursing scholarship program.—

427 (4) Credit for repayment of a scholarship shall be as
 428 follows:

429 (b) Eligible health care facilities include nursing homes
 430 and hospitals in this state, state-operated medical or health
 431 care facilities, public schools, county health departments,
 432 federally sponsored community health centers, colleges of
 433 nursing in universities in this state, and Florida College
 434 System institution nursing programs in this state, or family
 435 practice teaching hospitals as defined in s. 395.805, ~~or~~
 436 ~~specialty children's hospitals as described in s. 409.9119~~. The
 437 recipient shall be encouraged to complete the service obligation
 438 at a single employment site. If continuous employment at the
 439 same site is not feasible, the recipient may apply to the
 440 department for a transfer to another approved health care
 441 facility.

442 Section 11. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCAS 16-03 Alzheimer's Disease Research
SPONSOR(S): Health Care Appropriations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|--|--|
| Orig. Comm.: Health Care Appropriations Subcommittee | | Garner  | Pridgeon  |

SUMMARY ANALYSIS

The bill conforms statutes to the funding decisions included in the proposed General Appropriations Act (GAA) for Fiscal Year 2016-2017.

The bill amends s. 381.82, F.S., allowing the Ed and Ethel Moore Alzheimer's Disease Research Program to carry forward general revenue appropriations up to 5 years after an appropriation's effective date if obligated by June 30 of the year the funds were appropriated.

The House Proposed General Appropriations Act provides a \$5,000,000 recurring general revenue appropriation for the program.

The effective date of the bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Legislature created the Ed and Ethel Moore Alzheimer's Disease Research Program in 2014 (program). The program is housed in the Department of Health (DOH) and is administered by an 11 member board known as the Alzheimer's Disease Research Grant Advisory Board (board). The program's purpose is to fund research leading to prevention of, or a cure for, Alzheimer's disease.

The board must consist of 11 members appointed by the State Surgeon General and must include two gerontologists, two geriatric psychiatrists, two geriatricians, two neuroscientists, and three neurologists, who serve 4-year staggered terms. The board must elect a chairperson from the membership of the board who will serve a term of two years, establish operating procedures, follow rigorous guidelines for ethical conduct, and adhere to a strict policy with regard to conflicts of interest. DOH staff assists the board in carrying out its duties. Board members do not receive compensation, or reimbursement for per diem or travel. Board activities are exempt from public records requirements.

The board must submit recommendations for funding of research proposals to the State Surgeon General by December 15 of each year. Upon receiving consultation from the board, the State Surgeon General is authorized to award grants on the basis of scientific merit. Applications for research funding may be submitted by any university or established research institute in the state, and all qualified investigators in the state must have equal access and opportunity to compete for research funding. The implementation of the program is subject to legislative appropriation. Statute specifies certain types of applications to be considered for funding, including:

- Investigatory-initiated research grants;
- Institutional research grants;
- Pre-doctoral and post-doctoral research fellowships; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

The board is required to annually submit a fiscal-year progress report on the research program to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General by February 15. The report must include:

- A list of research projects supported by grants or fellowships awarded under the program;
- A list of recipients of program grants or fellowships;
- A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded under the program;
- The state ranking and total amount of Alzheimer's disease research funding currently flowing into the state from the National Institute of Health;
- New grants for Alzheimer's disease research which were funded based on research supported by grants or fellowships awarded under the program;
- Progress toward programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of Alzheimer's disease; and
- Recommendations to further the mission of the program.

In the Alzheimer's Disease Research Grant Advisory Board Annual Report 2014-15 the recommendations to further the mission of the program identified difficulties for researchers to complete the necessary research within the limited time frame of one year that a general revenue appropriation allows. The board recommended future appropriations made to the Ed and Ethel Moore Alzheimer's

Disease Research Program be funded from the Biomedical Research Trust Fund to allow research projects to span multiple years.¹

In 2014, the Legislature appropriated \$3,000,000 in general revenue funds to the Ed and Ethel Moore Alzheimer's Disease Research Program. The program awarded eleven grants ranging from \$112,500 to \$500,000 each fully encumbering the \$3,000,000 appropriation for fiscal year 2014 - 2015.² By default, general revenue appropriations that remain unspent at the end of a fiscal year revert to the state.³ However, the legislature may supersede this provision by passing a law that specifically authorizes the appropriation to be carried forward.⁴ In 2015, the Legislature appropriated \$3,000,000 in general revenue funds to the Ed and Ethel Moore Alzheimer's Disease Research Program in Specific Appropriation 454B and carried forward the unexpended balance of funds from the prior year in Section 50 of chapter 2015-232, Laws of Florida.

| Grant Recipients | Research Projects | Institution | Award Amount |
|------------------------|---|--|---------------|
| Ertekin-Taner, Nilufer | Florida Consortium for African-American Alzheimer's Disease Studies (FCA3DS) | Mayo Clinic Florida | \$ 500,000.00 |
| Loewenstein, David | A Consortium to Study Novel Markers of Early Alzheimer's Disease | University of Miami Miller School of Medicine | \$ 500,000.00 |
| Rademakers, Rosa | Identification of novel AD genes and disease associated pathways through FPADS; a Florida Presenile Alzheimer's Disease Subjects registry | Mayo Clinic Florida | \$ 500,000.00 |
| Lewis, Jada | Developing biotherapies for Alzheimer's Disease | University of Florida | \$ 250,000.00 |
| Dore, Sylvain | Therapeutic potential of PGE2 EP1 receptor selective antagonist | University of Florida | \$ 225,000.00 |
| Bu, Guojun | ApoE and gender effects on Alzheimer's disease and cerebral amyloid angiopathy | Mayo Clinic Florida | \$ 200,000.00 |
| Kang, David | Targeting the Slingshot-Cofilin Pathway in AD | University of South Florida | \$ 200,000.00 |
| Moraes, Carlos T | The Role of Mitochondrial Oxidative Phosphorylation Dysfunction in Alzheimer's Pathology | University of Miami, Miller School of Medicine | \$ 200,000.00 |
| Wahlestedt, Claes | Epigenetic approach for the treatment of Alzheimer's disease | University of Miami Miller School of Medicine | \$ 200,000.00 |
| Lee, Daniel C. | Modulation of Arginine Metabolism and Polyamines to Mitigate Alzheimer's disease Pathology | University of South Florida | \$ 112,500.00 |
| Tan, Jun | Flavonoid-diosmin, a novel gamma-secretase modulator, for the treatment of Alzheimer's disease | University of South Florida | \$ 112,500.00 |

¹ See Alzheimer's Disease Research Grant Advisory Board, Annual Report 2014-15 p. 6.

² See Alzheimer's Disease Research Grant Advisory Board, Annual Report 2014-15 p.4.

³ s. 216.301, F.S.

⁴ s.216.351, F.S.

Effect of Proposed Changes

The bill implements the board's recommendation to allow the Ed and Ethel Moore Alzheimer's Disease Research Program to carry forward unspent general revenue appropriations up to five years after an appropriation's effective date if obligated by June 30 of the year the funds were appropriated thus allowing research projects to span multiple years. In the past, DOH has indicated that such a change allows them to offer longer grant periods, thus enabling researchers to conduct clinical trials that are more likely to result in a marketable product.⁵ Five years is consistent with grant timeframes seen in other research programs such as the National Institutes of Health.⁶

B. SECTION DIRECTORY:

Section 1. Amends s. 381.82, F.S., allowing the Ed and Ethel Moore Alzheimer's Disease Research Program to carry forward unspent general appropriations funds for a period of five years.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The House Proposed General Appropriations Act provides a \$5,000,000 recurring general revenue appropriation for Ed and Ethel Moore Alzheimer's Disease Research Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Researchers will be able to perform multiyear projects and will benefit from having access to allocated grant funds over the course of a five year period.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁵ See generally Health and Human Services Committee Bill Analysis of 2012, House Bill 655 p. 4 (3/26/12).

⁶ National Institutes of Health, http://grants.nih.gov/grants/funding/funding_program.htm (last visited 3/5/2015).

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to Alzheimer's disease research;
3 amending s. 381.82, F.S.; providing for the
4 carryforward of any unexpended balance of an
5 appropriation for the Ed and Ethel Moore Alzheimer's
6 Disease Research Program; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (8) is added to section 381.82,
11 Florida Statutes, to read:

12 381.82 Ed and Ethel Moore Alzheimer's Disease Research
13 Program.—

14 (8) Notwithstanding s. 216.301 and pursuant to s. 216.351,
15 the balance of any appropriation from the General Revenue Fund
16 for the Ed and Ethel Moore Alzheimer's Disease Research Program
17 which is not disbursed but which is obligated pursuant to
18 contract or committed to be expended by June 30 of the fiscal
19 year in which the funds are appropriated may be carried forward
20 for up to 5 years after the effective date of the original
21 appropriation.

22 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 89 Florida Kidcare Program
SPONSOR(S): Diaz
TIED BILLS: **IDEN./SIM. BILLS:** SB 248

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|----------|--|
| 1) Health Innovation Subcommittee | 13 Y, 0 N | Poche | Poche |
| 2) Health Care Appropriations Subcommittee | | Pridgeon | Pridgeon  |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

The Florida Kidcare Program (Kidcare) was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for Kidcare is found in part II of ch. 409, F.S.

Kidcare consists of Medicaid, MediKids, the Children's Medical Services Network, and Florida Healthy Kids. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium.

Federal law restricted the eligibility of documented immigrants, including children and pregnant women, for social service benefits and programs such as Medicaid and CHIP. Documented immigrants were ineligible to apply for and received these benefits for 5 years, beginning with the date of their arrival in the United States. In 2009, the Children's Health Insurance Program Reauthorization Act permitted states to remove the 5 year waiting period and allow certain children immediate eligibility for Medicaid and CHIP coverage.

HB 89 removes the 5-year waiting period for lawfully present children in Florida, which makes those children immediately eligible for health care coverage through Kidcare and for payment of optional medical assistance and related services under Medicaid. The bill clearly states that eligibility is not being extended to undocumented immigrants.

The bill has a significant negative fiscal impact of \$28,835,214 for the Agency for Health Care Administration. However, the impact is in federal funds and family premiums paid through the Kidcare program. There is no state General Revenue Fund impact as the general revenue need is offset by a reduction in the Emergency Medical Assistance for Noncitizens program. See fiscal comments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Kidcare Program

The Florida Kidcare Program (Kidcare or Program) was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The federal authority for the CHIP is located in Title XXI of the Social Security Act. Initially authorized for 10 years and then recently re-authorized through 2019, with federal funding through 2015 by the Patient Protection and Affordable Care Act¹ and additional funding through 2017 by the Medicare Access and CHIP Reauthorization Act,² the CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for the Program is found in part II of ch. 409, F.S.

Kidcare encompasses four programs:

- Medicaid for children;
- The Medikids program;
- The Children's Medical Services Network; and
- The Florida Healthy Kids program.

Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium. Eligibility for the Program components that are funded by Title XXI is determined in part by age and household income as follows:

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

Kidcare is administered jointly by the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), the Department of Health (DOH), and the Florida Healthy Kids Corporation (FHKC). Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid, and the FHKC processes all Kidcare

¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, s. 10203.

² Pub. L. No. 114-10, s. 301.

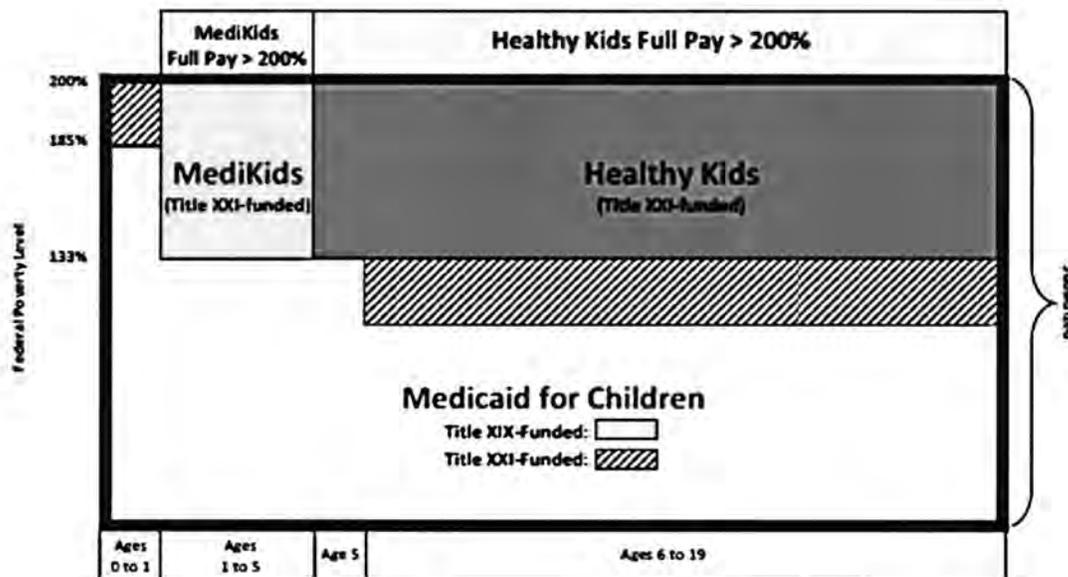
applications and determines eligibility for the CHIP, which includes a Medicaid screening and referral process to the DCF, as appropriate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms. Children are then determined to be eligible for the appropriate Program component based on the applicable income standards or they are determined to be ineligible for the Program based on applicable income standards.

Currently, FHKC receives all KidCare applications and screens for Medicaid eligibility. Families can apply for Medicaid for children or the Title XXI programs using the KidCare application. Families may also apply for Medicaid using the DCF form, Request for Assistance. The DCF Request for Assistance form cannot be used to apply for the Title XXI programs. Families can apply for both programs online. KidCare applications for children potentially eligible for Medicaid are electronically sent to the DCF for a complete Medicaid eligibility determination. If the child is not eligible for Medicaid, FHKC is notified to continue the Title XXI eligibility determination. FHKC determines eligibility for all of the Title XXI programs.

The following chart summarizes eligibility and funding for Kidcare.³

Florida KidCare Eligibility



EF 1/1/2014

CMS Network
(Title XIX and Title XXI)

The 2015-2016 General Appropriations Act appropriated \$417,791,567 for the Title XXI (CHIP) Program.⁴ As of January 2016, a total of 2,374,446 children are enrolled in Kidcare.⁵

³ Florida KidCare Coordinating Council, *2014 Annual Report and Recommendations*, page 4, available at http://www.floridakidcare.org/council/wp-content/uploads/2014/08/2014_Annual_Report.pdf (last viewed on January 11, 2016).

⁴ Email correspondence from Health Care Appropriations Subcommittee staff, January 7, 2016 (on file with Health Innovation subcommittee staff).

Eligibility of Alien Children for Medicaid and CHIP

The Immigration and Nationality Act (INA)⁶ was created in 1952 to consolidate statutes governing immigration law. The INA defines the term "alien" as "any person not a citizen or national of the United States."⁷ Generally, under the INA, an alien is not eligible for any State or local public benefit, including health benefits, unless the alien is:

- A qualified alien,
- A nonimmigrant alien under the INA, or
- An alien who is paroled into the United States under the INA.⁸

The INA permits a state to provide an alien, who is not lawfully present in the United States, eligibility for any state or local public benefit for which the alien would otherwise be ineligible, but only through the enactment of a state law which affirmatively provides for such eligibility.⁹

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Reconciliation Act")¹⁰ placed limitations on federal funding for health coverage of immigrant families. The law imposed a 5-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid.¹¹ Medicaid coverage for individuals subject to the 5-year waiting period and for those who do not meet the definition of qualified alien was limited to treatment of an emergency medical condition. The 5-year waiting period also applies to children and pregnant women under the CHIP.

Children's Health Insurance Program Reauthorization Act of 2009

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹² permits states to cover certain children and pregnant women who are "lawfully residing in the United States" in both Medicaid and the CHIP, notwithstanding certain provisions in the Reconciliation Act. States may elect to cover these groups under Medicaid only or under both Medicaid and the CHIP. The law does not permit states to cover these new groups only in the CHIP, without also extending the option to Medicaid.

On July 1, 2010, the Centers for Medicare and Medicaid Services sent a letter to state health officials regarding Medicaid and CHIP coverage for lawfully residing children and pregnant women. The letter states that children and pregnant women who fall into one of the following categories will be considered lawfully present. These individuals are eligible for Medicaid and CHIP coverage, if the state elects the new option under CHIPRA, and the child or pregnant woman meets the state residency requirements and other Medicaid or CHIP eligibility requirements.

- A qualified alien as defined in section 431 of Reconciliation Act (8 U.S.C. §1641).
- An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.

⁵ Agency for Health Care Administration, *Florida KidCare Enrollment Report-January 2016* (on file with Health Care Appropriations Subcommittee).

⁶ Pub. L. No. 82-414

⁷ Id. at s. 101(3)

⁸ 8 U.S.C. §1621(a)(1)-(3)

⁹ 8 U.S.C. §1621(d)

¹⁰ Pub. L. No. 104-193

¹¹ Id. at s. 403(a)

¹² Pub. L. No. 111-3

- An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.
- An alien who belongs to one of the following classes:
 - Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 -
 - Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - Aliens currently in deferred action status; or
 - Aliens whose visa petition has been approved and who have a pending application for adjustment of status.
- A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. §1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. §1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.
- An alien who has been granted withholding of removal under the Convention Against Torture.
- A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. §1101(a)(27)(J)).
- An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. §1806(e).
- An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

Effect of Proposed Changes

The bill adds the definition of “lawfully residing child” to the Florida Kidcare Act.¹³ To meet the definition, a child must be lawfully present in the United States and meet state residency requirements for CHIP or Medicaid, and may be eligible for assistance under CHIPRA.

The bill makes a lawfully residing child immediately eligible for health benefits coverage under Kidcare, and eligible for payment of optional Medicaid assistance and related services, thereby removing the 5-year waiting period imposed under the Reconciliation Act and exercising the state's option to do so as provided under CHIPRA.

The bill clearly states that Kidcare eligibility is not being extended to an undocumented immigrant by the changes to s. 409.814, F.S. The bill also clearly states that Kidcare eligibility for optional Medicaid payments or other services is not being extended to an undocumented immigrant through the changes to s. 409.904, F.S.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 409.811, F.S., relating to definitions relating to Florida Kidcare Act.
Section 2: Amends s. 409.814, F.S., relating to eligibility.
Section 3: Amends s. 409.904, F.S., relating to optional payments for eligible persons.
Section 4: Amends s. 624.91, F.S., relating to the Florida Health Kids Corporation Act.
Section 5: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The state would earn \$28,538,785 in additional federal revenues and collect \$296,429 in additional family premiums under this legislation.

2. Expenditures:

The Agency for Health Care Administration provides the following fiscal impact analysis of the bill on both CHIP and Medicaid programs:¹⁴

Title XXI (CHIP)

As federal funds are available for these expenditures, the state would incur its share of this additional cost. For SFY 2016-17, the state will pay 4.305% of the qualified expenditures and the federal government under Title XXI covers the remaining 95.695%. This analysis assumes that funding will continue for the Title XXI KidCare eligible children. Average monthly caseloads of 2,077 additional children are estimated to be covered.

| | |
|---|------------------|
| Total Additional Costs | \$4,777,482 |
| Less: Federal Funds under Title XXI | \$4,288,143 |
| Less: Grants & Donation Trust Fund | <u>\$296,429</u> |
| State Funds required - General Revenue | \$192,909 |

Funds from the Grants and Donation Trust Fund, derived from family payment of premiums, are applied to reduce state and federal share.

Medicaid Services funded by Title XXI funds

This analysis assumes that Medicaid services would be funded by Title XXI FMAP per section 214 of the federal CHIPRA legislation. Average monthly caseloads of 15,097 additional children are estimated to be covered.

| | |
|---|--------------------|
| Total Additional Cost with no Family Premiums | \$27,599,882 |
| Less: Federal Funds under Title XIX | \$26,411,708 |
| Less: Grants & Donation Trust Fund | <u>\$0</u> |
| State Funds required - General Revenue | \$1,188,175 |

¹⁴ Agency for Health Care Administration, 2016 Agency Legislative Bill Analysis- HB 89, January 15, 2016 (on file with Health Care Appropriations Subcommittee staff).

Potential Medicaid EMA cost offset

This analysis assumes that the Medicaid EMA program would see an overall caseload reduction of 1,418 beneficiaries receiving Medicaid services.

| | |
|--|---------------|
| Total Savings with no Family Premiums | (\$3,542,150) |
| Less: Federal Funds under Title XIX | (\$2,161,066) |
| Less: Grants & Donations Trust Fund | <u>\$0</u> |
| State Funds required - General Revenue | (\$1,381,084) |

The total fiscal impact for both CHIP and Medicaid funded under Title XIX and XXI in SFY 2016-17 for the provisions in this bill, including the potential Medicaid EMA cost offset, are estimated to be \$28,835,214 in federal funds and family premiums with no impact to General Revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers may see an increase in patients who receive health insurance coverage through the Program sooner than under current law. Children who are lawfully present in the state will be eligible for health insurance coverage, potentially increasing the frequency of access to medical care. Individuals and families accessing coverage under the Title XXI program would be required to pay family premiums totaling \$296,429.

D. FISCAL COMMENTS:

The fiscal impact from increased enrollment in the Title XIX and Title XXI program will be offset by a reduction in expenditures under the Emergency Medical Assistance for Noncitizens (EMA) program.¹⁵ Medicaid currently pays for emergency services for part of the population of children who will be newly eligible for coverage under the bill.

During fiscal year 2014-15, a total of 3,192 children received EMA coverage, totaling \$7,970,967 in expenditures.¹⁶ It is estimated that 50 percent of these EMA expenditures were for children who were in the 5-year waiting period and would have qualified for and enrolled in CHIP or Medicaid coverage under the provisions of this bill.

¹⁵ Noncitizens, who are Medicaid eligible except for citizenship, may be eligible for Medicaid to cover a serious medical emergency. If so, Medicaid will cover necessary treatment until the medical emergency has abated. Before Medicaid may be authorized, applicants must provide proof from a medical professional stating the treatment was due to an emergency condition. The proof also must include the date or dates of the emergency.

¹⁶ Supra, FN 16 at page 4.

This analysis estimates that 42.42% of the EMA expenditures from fiscal year 2014-15 were for children who were in the waiting period and would have qualified for and enrolled in CHIP or Medicaid coverage.

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 DOH, the DCF, and the AHCA have appropriate rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

AHCA will need to submit to the federal Centers for Medicare and Medicaid Services (CMS) an amendment to the Medicaid and CHIP State Plans for approval to implement the changes proposed in the bill. It is unknown how long it will take CMS to approve the amendments, which may delay implementation of the changes made by the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Florida Kidcare program;
 3 amending s. 409.811, F.S.; defining the term "lawfully
 4 residing child"; deleting the definition of the term
 5 "qualified alien"; conforming provisions to changes
 6 made by the act; amending s. 409.814, F.S.; revising
 7 eligibility for the program to conform to changes made
 8 by the act; clarifying that undocumented immigrants
 9 are excluded from eligibility; amending s. 409.904,
 10 F.S.; providing eligibility for optional payments for
 11 medical assistance and related services for certain
 12 lawfully residing children; clarifying that
 13 undocumented immigrants are excluded from eligibility
 14 for optional Medicaid payments or related services;
 15 amending s. 624.91, F.S.; conforming provisions to
 16 changes made by the act; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Present subsections (17) through (22) of
 21 section 409.811, Florida Statutes, are renumbered as subsections
 22 (18) through (23), respectively, a new subsection (17) is added
 23 to that section, and present subsections (23) and (24) of that
 24 section are amended, to read:

25 409.811 Definitions relating to Florida Kidcare Act.—As
 26 used in ss. 409.810-409.821, the term:

27 (17) "Lawfully residing child" means a child who is
 28 lawfully present in the United States, meets Medicaid or
 29 Children's Health Insurance Program (CHIP) residency
 30 requirements, and may be eligible for medical assistance with
 31 federal financial participation as provided under s. 214 of the
 32 Children's Health Insurance Program Reauthorization Act of 2009,
 33 Pub. L. No. 111-3, and related federal regulations.

34 ~~(23) "Qualified alien" means an alien as defined in s. 431~~
 35 ~~of the Personal Responsibility and Work Opportunity~~
 36 ~~Reconciliation Act of 1996, as amended, Pub. L. No. 104-193.~~

37 (24) "Resident" means a United States citizen, or lawfully
 38 residing child ~~qualified alien~~, who is domiciled in this state.

39 Section 2. Paragraph (c) of subsection (4) of section
 40 409.814, Florida Statutes, is amended to read:

41 409.814 Eligibility.—A child who has not reached 19 years
 42 of age whose family income is equal to or below 200 percent of
 43 the federal poverty level is eligible for the Florida Kidcare
 44 program as provided in this section. If an enrolled individual
 45 is determined to be ineligible for coverage, he or she must be
 46 immediately disenrolled from the respective Florida Kidcare
 47 program component.

48 (4) The following children are not eligible to receive
 49 Title XXI-funded premium assistance for health benefits coverage
 50 under the Florida Kidcare program, except under Medicaid if the
 51 child would have been eligible for Medicaid under s. 409.903 or
 52 s. 409.904 as of June 1, 1997:

53 (c) A child who is an alien, but who does not meet the
 54 definition of a lawfully residing child ~~qualified alien, in the~~
 55 ~~United States.~~ This paragraph does not extend eligibility for
 56 the Florida Kidcare program to an undocumented immigrant.

57 Section 3. Subsections (8) and (9) of section 409.904,
 58 Florida Statutes, are renumbered as subsections (9) and (10),
 59 respectively, and a new subsection (8) is added to that section
 60 to read:

61 409.904 Optional payments for eligible persons.—The agency
 62 may make payments for medical assistance and related services on
 63 behalf of the following persons who are determined to be
 64 eligible subject to the income, assets, and categorical
 65 eligibility tests set forth in federal and state law. Payment on
 66 behalf of these Medicaid eligible persons is subject to the
 67 availability of moneys and any limitations established by the
 68 General Appropriations Act or chapter 216.

69 (8) A child who has not attained the age of 19 who,
 70 notwithstanding s. 414.095(3), would be eligible for Medicaid
 71 under s. 409.903, except that the child is a lawfully residing
 72 child as defined in s. 409.811. This subsection does not extend
 73 eligibility for optional Medicaid payments or related services
 74 to an undocumented immigrant.

75 Section 4. Paragraph (b) of subsection (3) of section
 76 624.91, Florida Statutes, is amended to read:

77 624.91 The Florida Healthy Kids Corporation Act.—

78 (3) ELIGIBILITY FOR STATE-FUNDED ASSISTANCE.—Only the

79 following individuals are eligible for state-funded assistance
80 in paying Florida Healthy Kids premiums:

81 (b) Notwithstanding s. 409.814, a legal alien ~~aliens~~ who
82 is ~~are~~ enrolled in the Florida Healthy Kids program as of
83 January 31, 2004, who does ~~do~~ not qualify for Title XXI federal
84 funds because he or she is ~~they are~~ not a lawfully residing
85 child ~~qualified aliens~~ as defined in s. 409.811.

86 Section 5. This act shall take effect July 1, 2016.

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: Health Care Appropriations
2 Subcommittee

3 Representative Diaz, J. offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 85 and 86, insert:

7 Section 5. For the 2016-2017 fiscal year, the sums of
8 \$28,538,785 in recurring funds from the Medical Care Trust Fund
9 and \$296,429 in recurring funds from the Grants and Donations
10 Trust Fund is appropriated to the Agency for Health Care
11 Administration for the purpose of implementing this act.

12
13 -----

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

15 Remove line 16 and insert:
16 changes made by the act; providing an appropriation; providing
17 an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 259 Powers of Attorney

SPONSOR(S): Civil Justice Subcommittee; Children, Families & Seniors Subcommittee; Rodrigues, R. and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1102

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|-----------|--|
| 1) Children, Families & Seniors Subcommittee | 7 Y, 4 N, As CS | Tuszynski | Brazzell |
| 2) Civil Justice Subcommittee | 11 Y, 2 N, As CS | Robinson | Bond |
| 3) Health Care Appropriations Subcommittee | | Pridgeon | Pridgeon  |
| 4) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

Families are often confronted with circumstances, such as drug abuse, illness, unemployment, or homelessness, which, if not appropriately addressed, can lead to abuse, neglect, or abandonment of their children. Several programs in Florida are working to support such families in crisis. The programs assist parents with finding safe temporary placements for their children to ensure the children do not enter the child welfare system while parents work to reestablish a safe and stable living environment.

CS/CS/HB 259 creates s. 709.2209, F.S., entitled the "Temporary Care of Minor Children by Safe Families Act," as a means of preventing the entry of a child at risk of abuse or neglect into the child welfare system.

The bill authorizes the parent of a minor child, by executing a power of attorney, to delegate certain powers regarding the care and custody of the child to volunteer families screened and trained by certain nonprofit organizations. The delegation of care and custody does not change parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child.

The bill:

- Prohibits a parent or agent from receiving compensation related to the delegation of care and custody.
- Limits the delegation of care and custody to a period of 6 months.
- Requires both parents to consent to the delegation of care and custody, or, the provision of notice to a nonconsenting parent.
- Specifies requirements for the execution, form, and revocation of the power of attorney.
- Requires nonprofit organizations that assist with the temporary placement of the child to provide training to the volunteer families, conduct background screenings, provide support services to the families, maintain certain records, and notify the Department of Children and Families (DCF) if a family seeking services is the subject of an open child protective investigation.
- Requires DCF to provide information regarding temporary care programs to parents during a child protective investigation if appropriate.

The bill also exempts the nonprofit organization assisting with the placement, and the volunteer family serving as an agent under the power of attorney, from licensing and regulation by DCF. However, the bill does not prevent DCF or law enforcement from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.

The bill has no fiscal impact on local government. The bill has an indeterminate fiscal impact on state expenditures.

The bill has an effective date of July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0259d.HCAS.DOCX

DATE: 1/25/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be ameliorated, the child welfare system finds safe out-of-home placements for children, such as relative and non-relative caregivers, foster families, or adoptive families.¹ As of December 31, 2015, there were 22,668 children under the supervision of the Department of Children and Families (DCF) in out-of-home care.²

Prevention

DCF's Child Welfare Program works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.³ DCF's practice model is based on the safety of the child within their home, utilizing in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in their home environment.

However, when it is determined that a child cannot safely remain in their own home, DCF works, through the involvement of the courts, toward guaranteeing the safety of the child out of home while providing services to reunify the child and family as soon as it is no longer unsafe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her in the family home, the child welfare system works to find a permanent home for that child through the adoption process.

Types of placements and licensure

For children who cannot safely remain in their own homes, the child welfare system finds an appropriate out-of-home placement. The placements range from temporary placement with a family member to a permanent adoptive placement with a family previously unknown to the child.

The following placements do not require licensure by DCF:

- Relative caregivers;
- Non-relative caregivers;
- An adoptive home which has been approved by DCF or by a licensed child-placing agency for children placed for adoption; and
- Persons or neighbors who care for children in their homes for less than 90 days.⁴

¹ See s. 39.001(1), F.S.

² "Out-of-home care" includes both children in board-paid foster care and those receiving protective supervision in the home of a relative or approved non-relative after a removal. Children under protective supervision in the home of a relative or approved non-relative after removal are considered "out-of-home," as they are entitled to the same safeguards as board-paid foster children. See Florida Department of Children and Families, *Performance Dashboard Application: Number of Children in out-of-home care*, <http://dcfdashboard.dcf.state.fl.us/index.cfm?page=details&id=M0297> (last visited January 19, 2016).

³ S. 39.001(8), F.S.

⁴ S. 409.175, F.S.

Placements that do require licensure and regulation include family foster homes, residential child-caring agencies, and child-placing agencies.⁵

Section 409.175(2)(d), F.S., defines a "child-placing agency" as any person, corporation or agency, public or private that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.

Section 409.175(2)(e), F.S., defines a "family foster home" as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include a person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption.

Licensure involves meeting rules and regulations pertaining to:

- The operation, conduct, and maintenance of these homes;
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served;
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served;
- The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of foster homes;
- The maximum number of children in the home; and
- The good moral character based upon screening, education, training, and experience requirements for personnel.⁶

Background Screening

DCF is required to determine the good moral character of personnel of the child welfare system,⁷ through level 2 background screenings, as provided for in ch. 435, F.S.⁸ "Personnel" includes all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency.⁹ Family members and persons between the ages of 12 and 18 residing with the owner or operator of a family foster home or agency must also undergo a delinquency record check, but such record check does not require fingerprinting.¹⁰

A level 2 background screening involves a state and national fingerprint-based criminal record check through the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI).¹¹ Level 2 background screenings require that no person has been arrested for and awaits final disposition, has been found guilty of, or entered a plea of nolo contendere to crimes related to sexual misconduct, child or adult abuse, murder, manslaughter, battery, assault, kidnapping, weapons, arson, burglary, theft, robbery, and exploitation.¹² The cost for a Level 2 background screening ranges from \$38 to \$75 depending upon the selected vendor.¹³ DCF processes the background screenings through

⁵ S. 409.175, F.S.

⁶ S. 409.175, F.S.

⁷ S. 409.175(5)(a), F.S.

⁸ S. 409.175(2)(k), F.S.

⁹ S. 409.175(2)(i), F.S.

¹⁰ *Id.*

¹¹ S. 435.04, F.S.

¹² S. 435.04(2), F.S.

¹³ Department of Children and Families, *Livescan Vendor Locations*, available at <http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp> (last visited November 5, 2015).

the Care Provider Background Screening Clearinghouse for individuals working in the child welfare system who are required by law to be background screened.

DCF may grant exemptions from disqualification of employment in certain circumstances,¹⁴ such as felonies that are older than 3 years and offenses that were felonies when committed, but that are now classified as misdemeanors.¹⁵

Care Provider Background Screening Clearinghouse

The Care Provider Background Screening Clearinghouse¹⁶ (clearinghouse) is a statewide system that enables certain specified state agencies, such as DCF and the Agency for Persons with Disabilities, to submit requests for level 2 background screenings for certain statutorily-defined purposes, such as licensure or license-related employment. The level 2 screening results are provided to the requesting agency, not the individual or employer organization, and are also retained in the clearinghouse.

There are several benefits to utilizing the clearinghouse including significant cost savings due to use of existing screenings, access to a screened individual's Florida public criminal record, and immediate notification of an employee or licensee arrest in Florida due to the active monitoring of the record.

Alternatives to Child Welfare System

Sometimes, parents are in crisis and are unable to adequately deal with both the crisis and parenting at the same time due to the lack of family or supportive relationships to help them through the crisis while caring for their child.¹⁷ This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect.¹⁸ Furthermore, homelessness, unemployment, domestic violence, illness, mental health issues, and substance addiction can all lead to situations in which a parent must choose between addressing the immediate crisis and adequate care of his or her child.¹⁹

Safe Families for Children (SFFC)

In 2002, the Safe Families for Children (SFFC) program originated in Chicago as a ministry of the LYDIA Home Association, a Christian social service organization. The program created a model in which parents in crisis without family or support relationships had a place to go for help without entering the child welfare system and losing custody of their children.²⁰ The model includes placing a child with an unpaid volunteer host family, allowing a parent the time and space to deal with whatever issues brought them to SFFC, such as hospitalization, or a longer-term crisis, such as drug treatment or incarceration. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.²¹

These private, voluntary placements require that the parent sign an agreement reciting the terms and conditions of the arrangement, including what the parent will need to do to be reunified with their children and how the program will respond if the parent is unable to complete performance.²² The parent thereafter delegates care and custody of the child to the host volunteer family through a power of attorney.

¹⁴ S. 409.175(5)(a)6., F.S.

¹⁵ S. 435.07, F.S.

¹⁶ S. 435.12, F.S.

¹⁷ Murray, K, et al., *Safe Families for Children's Program Model and Logic Model Description Report*, University of Maryland School of Social Work, 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² The Florida Senate, Committee on Children, Families, and Elder Affairs, *Issue Brief 2010-304: "Temporary Parents" as an Alternative to the Foster Care System (September 2009)*, at 2, available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-304cf.pdf (last visited Jan. 8, 2016).

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.²³ SFFC reports that the hallmarks of the program are that parents retain full legal custody of children, volunteer families are extensively screened and supported, the average length of stay is 6 weeks (but may range from 2 days to 1 year), there is a close working relationship between the Safe Families organization, local churches, and the referring organization, and that the model is committed to reuniting the family as soon as possible.²⁴ Volunteers and families served often continue a relationship after reunification has occurred – the program does not consider this “recidivism”, as re-entry into the child welfare system is classified, but a normal and natural “re-use” of parental support and friendship.²⁵

Programs based on the SFFC model are active throughout the country (54 active programs in 25 states),²⁶ with Oregon, Wisconsin, and Oklahoma codifying similar models in statute.²⁷ Florida currently has 4 areas where SFFC models operate: SFFC Southwest Florida in Naples, Bethany Christian Services of the Gulf Coast in Pensacola, Bethany Christian Services of Orlando, and Bethany Christian Services of Tampa Bay.²⁸

Background Screenings for SFFC Volunteers

Florida SFFC organizations currently perform background screening through the Volunteer and Employee Criminal History System (VECHS) program, offered by the Florida Department of Law Enforcement.²⁹

VECHS was implemented in 1999 and is authorized by the National Child Protection Act (NCPA) and s. 943.0542, F.S. The VECHS program provides a means to background screen the employees and volunteers of organizations who work with vulnerable individuals but who are not required by law to be background screened. Examples of organizations that may use VECHS are churches and volunteer organizations that serve children, the elderly or persons with disabilities but are not licensed or contracted by the state.

Through the VECHS program, FDLE and the FBI provide state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals or state agencies) in Florida. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or persons with disabilities.³⁰

Unlike the clearinghouse, screenings through the VECHS program are not actively monitored. The screenings provide a snapshot in time of that particular employee or volunteer’s criminal record at the time the screen is completed. Any arrest or judicial action after that screening is completed is unknown. Additionally, the organization receiving the screening results makes its own determination of whether to employ the individual or use the volunteer based on its own standards.

²³ Safe Families for Children, Who we help, *available at*: http://www.safe-families.org/whatis_whoehelp.aspx (last visited November 14, 2015).

²⁴ *Id.*

²⁵ The Florida Senate, Committee on Children, Families, and Elder Affairs, *Issue Brief 2010-304: “Temporary Parents” as an Alternative to the Foster Care System (September 2009)*, at 2, *available at*

http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-304cf.pdf (last visited January 8, 2016).

²⁶ *Supra* note 23.

²⁷ The Foundation for Government Accountability, *Safe Families in the States – 2016*, *available at*: <http://thefga.org/solutions/foster-care-reform/safe-families/> (last visited November 13, 2015).

²⁸ Safe Families for Children, *Location/Contact Us*, *available at*: http://www.safe-families.org/whatis_locations.aspx (last visited November 14, 2015).

²⁹ Email from Andrew Brown, Senior Fellow, Foundation for Government Accountability, RE: HB 259, (11/16/15).

³⁰ Florida Department of Law Enforcement, *Volunteer and Employee Background checks*, *available at*: <http://www.fdle.state.fl.us/Content/Background-Checks/Menu/VECHS.aspx> (last visited November 2, 2015).

Liability and Insurance

Should a child become ill or injured while in the care of a SFFC volunteer host family, the host family may have limited personal liability pursuant to the federal Volunteer Protection Act³¹ (VPA) and Florida Volunteer Protection Act³² (FVPA). The VPA provides that a volunteer of a nonprofit organization may not be liable for harm caused by his or her act or omission if:

- The volunteer was acting within the scope of his or her responsibilities for the organization; and
- The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.³³

The FVPA also provides immunity from civil liability if the volunteer was acting with good faith within the scope of his or her duties, as an ordinary reasonable person would have acted under the same or similar circumstances, and the harm was not caused by wanton or willful misconduct.³⁴ Neither the VPA or the FVPA provide immunity to the nonprofit organization itself.

The Chicago SFFC program reported that it purchases liability insurance to cover the program volunteers and suggests that their volunteer families purchase an umbrella policy to provide additional protection.³⁵

Powers of Attorney

Powers of attorney are governed by Part II of ch. 709, F.S., the Florida Power of Attorney Act (FPAA). A power of attorney is a document that grants authority to an agent to act in the place of a principal.³⁶ The scope of the authority granted to an agent depends upon the specific language of the power of attorney. An agent may only exercise authority specifically granted in a power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority.³⁷ A power of attorney must be signed by the principal, by two subscribing witnesses, and be acknowledged by the principal before a notary public.³⁸ The power of attorney benefits and binds the principal to an agent's actions as if the principal had done them himself or herself.

Under federal law, all enlisted military members who have dependents and are either single or part of a dual-military couple must have a Family Care Plan,³⁹ which includes a military power of attorney for the care of the member's dependent children.⁴⁰ Such military powers of attorney are valid and must be accepted in Florida under the FPAA if executed in accordance with federal law.⁴¹ However, current law is silent as to whether a power of attorney can be created and used for the delegation of the care and custody of a minor child under the FPAA.⁴²

³¹ Volunteer Protection Act of 1997, 42 U.S.C. § 14501 *et seq*

³² S. 768.1355, F.S.

³³ 42 U.S.C. § 14503.

³⁴ S. 768.1355(1), F.S.

³⁵ *Supra* note 25, at 3.

³⁶ Chapter 709, F.S.

³⁷ S. 709.2201(1), F.S.

³⁸ S. 709.2105(2), F.S.

³⁹ A "family care plan" is the means by which a soldier plans in advance for the care of his family members when the soldier is deployed, TDY, or otherwise not available because of military duty. The plan includes DA Form 5305-R, Family Care Plan; DA Form 5841-R, Power of Attorney; DA Form 5840-R, Certificate of Acceptance as Guardian or Escort; DD Form 1172, Application for Uniformed Services Identification Card DEERS Enrollment; DD Form 2558, Authorization to start, stop, or change allotment, for Active Duty or Retired Personnel; and DA Form 5304-R, Family Care Plan Counseling Checklist.

⁴⁰ Department of Defense, Instruction No.1342.19 (May 7, 2010) *available at* www.dtic.mil/whs/directives/corres/pdf/134219p.pdf (last visited January 8, 2016).

⁴¹ A military power of attorney is valid if it is executed in accordance with 10 U.S.C. s. 1044b, as amended. A deployment-contingent power of attorney may be signed in advance, is effective upon the deployment of the principal, and shall be afforded full force and effect by the courts of this state. S. 709.2106(4).

⁴² However, s. 743.0645, F.S., recognizes the validity of a limited power of attorney to provide consent to medical care or treatment of a minor.

EFFECT OF PROPOSED CHANGES

CS/CS/HB 259 creates s. 709.2209, F.S., entitled the "Temporary Care of Minor Children by Safe Families Act," which provides a framework for the operation of programs based upon the Safe Families for Children model.

Safe Families Programs

The bill establishes a number of requirements for qualified nonprofit organizations operating based on the SFFC model. A "qualified nonprofit organization" is defined as a charity or religious institution organized under s. 501(c)(3) of the Internal Revenue Code that, without compensation, assists parents with the provision of voluntary temporary care of children pursuant to a power of attorney. The nonprofit organization must:

- Require disclosure of any open DCF investigation or involvement by a parent seeking to utilize its assistance with the temporary placement of child pursuant to a power of attorney. If the organization learns of undisclosed DCF involvement, the bill requires the organization to inform DCF.
- Ensure background screenings of employees and volunteers of the organization who will have unsupervised contact with a child placed by the organization with a volunteer family, including all members of the volunteer family household who are 12 years of age or older. The bill requires DCF to conduct such background screenings pursuant to its own screening procedures for out-of-home placements.⁴³ The department must inform the organization if such persons pass the background screening.
- Identify appropriate and safe placements for children based on the results of the background screenings and home visits.
- Train volunteer families that will serve as an agent under a power of attorney delegating the care and custody of a minor child.
- Provide ongoing services and resources to support the minor child, parents, and volunteer families.
- Maintain a record of each child placement facilitated by the organization for at least 5 years following the expiration of the power of attorney.

The bill excludes a qualified nonprofit organization from the definition of a "child-placing agency"⁴⁴ under ch. 409, F.S., thereby exempting the organization from DCF licensure requirements unless the qualified nonprofit organization pursues child-placing activities. Further, the bill provides that facilitating the temporary care of a child by a volunteer family through a power of attorney does not constitute placing the child in foster care and the agent is not required to be licensed as a family foster home.

Power of Attorney for Temporary Care of Minor Child

The bill authorizes a parent of a minor child to delegate the care and custody of the child to an agent through a power of attorney as required by many SFFC programs. An "agent" is defined as a natural

⁴³ S. 39.0138(1), F.S. provides in pertinent part: "the department shall conduct a records check through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other visitors to the home. An out-of-state criminal history records check must be initiated for any person 18 years of age or older who resided in another state if that state allows the release of such records. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision."

⁴⁴ "Child-placing agency" means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home. S. 409.175(2)(d), F.S.

person that is at least 18 years old who has successfully passed the training and background screening requirements. The bill prohibits the parent and the agent from receiving any compensation related to the delegation of care and custody.

The delegation of care and custody pursuant to the power of attorney may not:

- Delegate the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights of the child.
- Exceed a period of 6 months. However, the bill does not limit the number of times a power of attorney may be re-executed with the same or a different agent.

The power of attorney must:

- Be signed by both parents, if both parents are living and have shared custody of the child. If the parents do not have shared custody, the parent with sole custody may execute the power of authority but must notify the noncustodial parent at his or her last known address within 5 days. Notification is not required to a noncustodial parent whose parental rights have been terminated.
- Be signed by a representative of the nonprofit organization attesting that the agent has successfully completed the required training and background screening.
- Be executed in accordance with the Florida Power of Attorney Act.

The bill details the requirements of the power of attorney form to include the identity of the child and parent(s) delegating authority, the identity of the agent to whom the powers are delegated, a statement of delegated and non-delegated powers, and the expiration date.

Any parent of the child with custodial rights may revoke the power of attorney prior to its expiration and the agent must immediately return the child to the custody of the revoking parent.

The power of attorney is governed in all other respects by the requirements of the Florida Power of Attorney Act.

Effect of Power of Attorney upon Parental Rights

The bill further specifies that the execution of a power of attorney does not deprive a parent of parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child. Such rights include the ability to appoint a guardian under ch. 744, F.S. This provision may affect the ability of courts to modify custody and child support obligations established under ch. 61, F.S.

Child Welfare Investigations

The bill requires DCF, during a child protective investigation that does not result in an out-of-home placement, to provide information to a parent regarding respite care services, voluntary temporary placement, or other support services for families in crisis, such as SFFC programs, if deemed appropriate by a child protective investigator.

The execution of a power of attorney authorized by the bill after using such community services may not be construed as abandonment, abuse, or neglect as defined in s. 39.01, F.S. without other evidence or except as otherwise provided by law. However, the bill does not prevent DCF or law enforcement from investigating allegations of abuse, abandonment, neglect, unlawful desertion of a child, or human trafficking.

Exclusions

The bill does not apply to the delegation of the care and custody of a minor child pursuant to a military power of attorney executed under federal law.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.175, F.S., relating to licensure of family foster homes.

Section 2: Creates a new section of law, s. 709.2209, F.S. entitled "Power of attorney for temporary care of minor child."

Section 3: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires Level 2 background screening for employees and volunteers of a nonprofit agency that may have unsupervised contact with the children, the agent and any household members 12 and older. The number of individuals required to be screened by DCF is indeterminate, but most likely not significant. DCF indicates that additional costs may be incurred if the department must consider exemptions for disqualifying offenses, including costs related to the provision of an administrative hearing and department legal representation, however this impact is indeterminate, but most likely not significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires notarization of a power of attorney for the temporary care of a minor child. The cost of notarial services varies among notaries but is expected to be insignificant. Additionally, a custodial parent that is required to provide notice to a noncustodial parent of the delegation of care and custody may incur approximately \$6.74 in postage costs. The bill requires a qualified nonprofit organization to complete a criminal history record check on certain individuals at \$38.75 per individual. Also, additional fees may be charged by each live scan provider for their services.

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:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.⁴⁵ The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.⁴⁶

These constitutional protections extend to the parenting interests of custodial and non-custodial parents alike.⁴⁷ To the extent that the bill authorizes delegation of the care and custody of a minor child to an agent through a power of attorney without the consent of both parents, such delegation may be unenforceable if challenged by a nonconsenting parent.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not require background screenings to be held in the Care Provider Background Screening Clearinghouse under s. 435.12, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 11, 2015, the Children, Families and Seniors Subcommittee adopted a strike-all amendment. The amendment made the following changes:

- Restructured the bill's sections for clarity and readability.
- Narrowed the definition of "agent" for purposes of this subsection to include only natural persons who do not receive payment and prohibits successor agents.
- Expands the definition of qualified nonprofit organization to include duties to train, identify appropriate and safe placements based on background screening and home visits, as well as provide services.
- Requires employees or volunteers who may have unsupervised contact with a child placed with an agent, including the agent and all members of the agent's household who are 12 years or older, to be background screened pursuant to s. 943.0542.
- Removes the requirement of sharing background screenings with a notary public, instead requiring a notarized letter signed by a representative of the qualified nonprofit organization attesting to the existence of favorable background screenings.
- Removes the requirement for DCF to share confidential information with a qualified nonprofit organization and instead requires the parent to inform the qualified nonprofit organization of any DCF involvement with the family.
- Clarifies that the section shall not be interpreted to prevent the department or law enforcement from investigating allegations of abuse, abandonment, neglect, or unlawful desertion of a child.
- Exempts the agents from foster care licensure requirements under s.409.175, F.S.

⁴⁵ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

⁴⁶ *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).

⁴⁷ See *Stanley v. Illinois*, 405 U.S. 645(1972); *Caban v. Mohammed*, 441 U.S. 380 (1979).

- Requires DCF to provide information to a parent regarding respite care services, voluntary temporary placement, or other support services for families in crisis if deemed appropriate by a child protective investigator.

On January 13, 2016, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Providing a short title for the bill, the "Temporary Care of Minor Children by Safe Families Act."
- Limiting the ability to delegate care and custody of a minor child by power of attorney to parents that use the services of a qualified nonprofit organization.
- Revising the definition of the term "agent" to specify that an agent under a power of attorney must be a natural person 18 years of age or older who has been trained and screened by a qualified nonprofit corporation.
- Prohibiting a parent, in addition to a nonprofit organization or agent, from receiving compensation related to delegating care and custody of the child.
- Shortening the allowable period of the power of attorney from one year to six months.
- Requiring that both parents consent to the delegation of care and custody of the minor child, or that the custodial parent provide notice to a noncustodial parent under certain circumstances.
- Revising requirements for the execution, form, and revocation of the power of attorney.
- Requiring a nonprofit organization to maintain records related to child placements for at least 5 years.
- Providing that required background screening be conducted by DCF utilizing DCF screening standards for out-of-home placements rather than by a nonprofit organization through VECHS.
- Authorizing modification of custodial rights or support obligations of a parent delegating care and custody if determined by the court to be in the best interests of the child.
- Excluding military power of attorneys from the provisions of the bill and removing specific references and exceptions for "serving parents".

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to temporary care of a minor child
 3 pursuant to a power of attorney; amending s. 409.175,
 4 F.S.; revising the definition of the term "family
 5 foster home" to exclude certain agents; exempting
 6 certain agents who provide continuous full-time child
 7 care or custody from licensure; creating s. 709.2209,
 8 F.S.; providing a short title; providing legislative
 9 findings; providing definitions; authorizing a parent
 10 to delegate temporary custody and care of a child to
 11 an agent by a power of attorney; specifying the form
 12 and execution of the power of attorney; providing for
 13 revocation of the power of attorney; providing
 14 requirements for a qualified nonprofit organization;
 15 requiring training and criminal history background
 16 checks for certain persons; requiring such
 17 organization to notify the Department of Children and
 18 Families under certain circumstances; providing
 19 recordkeeping requirements; requiring the department
 20 to provide information to a parent regarding community
 21 service programs under certain circumstances;
 22 providing limitations; providing an exemption for
 23 military powers of attorney; providing an effective
 24 date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (e) of subsection (2) and paragraph (d) of subsection (4) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(2) As used in this section, the term:

(e) "Family foster home" means a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, ~~or~~ an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption, or an agent who cares for a child pursuant to s. 709.2209 is not considered a family foster home.

(4)

(d) This license requirement does not apply to boarding schools, recreation and summer camps, nursing homes, hospitals, ~~or to~~ persons who care for children of friends or neighbors in their homes for periods not to exceed 90 days, ~~or to~~ persons who have received a child for adoption from a licensed child-placing

53 | agency, or agents who care for children pursuant to s. 709.2209.

54 | Section 2. Section 709.2209, Florida Statutes, is created
55 | to read:

56 | 709.2209 Power of attorney for temporary care of minor
57 | child by safe families.-

58 | (1) SHORT TITLE.-This section may be cited as the
59 | "Temporary Care of Minor Children by Safe Families Act."

60 | (2) FINDINGS.-The Legislature finds that in circumstances
61 | in which the parent of a minor child is temporarily unable to
62 | provide care for the child, but does not need the full support
63 | of the child welfare system, a less intrusive alternative to
64 | supervision by the Department of Children and Families and the
65 | dependency court under chapter 39 should be available. In such
66 | circumstances, a parent may delegate temporary care of the child
67 | through a properly executed power of attorney to a safe family
68 | identified by a qualified nonprofit organization.

69 | (3) DEFINITIONS.-As used in this section, the term:

70 | (a) "Agent" means a natural person 18 years of age or
71 | older who successfully meets the training and background
72 | screening requirements under subsection (6) and is granted
73 | authority to take custody of and care for a child on behalf of a
74 | parent pursuant to a power of attorney authorized under this
75 | section, whether such person is denominated an agent, attorney
76 | in fact, or otherwise. The term includes an original agent and
77 | co-agent. Successor agents are not permitted under this section.

78 | (b) "Department" means the Department of Children and

79 | Families.

80 | (c) "Qualified nonprofit organization" means a charity or
81 | religious institution organized under s. 501(c)(3) of the United
82 | States Internal Revenue Code that, without compensation, assists
83 | a parent in obtaining temporary care for his or her child
84 | pursuant to a power of attorney executed under this section. A
85 | qualified nonprofit organization is not a child-placing agency
86 | as defined in s. 409.175(2)(d) and is not required to be
87 | licensed as such unless the qualified nonprofit organization
88 | attempts to place or arrange for the placement of a child as
89 | provided in s. 409.175(2)(d).

90 | (4) POWER OF ATTORNEY.—A parent of a minor child may, by a
91 | power of attorney, delegate to an agent any of the powers
92 | regarding the care and custody of the child, except the power to
93 | consent to the marriage or adoption of the child, the
94 | performance or inducement of an abortion on or for the child, or
95 | the termination of parental rights to the child, for a period
96 | not to exceed 6 months. The agent must serve without
97 | compensation and the parent may not receive compensation for
98 | delegating the care and custody of the child.

99 | (a) The power of attorney must:

100 | 1. Be signed by both parents if both parents are living
101 | and have shared responsibility and timesharing of the child as a
102 | matter of law or pursuant to a court order. If the parents do
103 | not have shared responsibility and timesharing of the child, the
104 | parent having sole custody of the child may execute the power of

105 attorney, but shall notify the noncustodial parent in writing of
 106 the name and address of the agent. Such notification must be
 107 delivered by certified mail, return receipt requested, to the
 108 noncustodial parent at his or her last known address within 5
 109 days after the execution of the power of attorney. Notification
 110 is not required to a noncustodial parent whose parental rights
 111 have been terminated.

112 2. Be signed by a representative of the qualified
 113 nonprofit organization which assisted with the placement of the
 114 child certifying the statement in subparagraph (b)4.

115 3. Be signed by the agent.

116 4. Be signed by two subscribing witnesses.

117 5. Be acknowledged by the parent or parents, as applicable
 118 under subparagraph 1., and the representative of the qualified
 119 nonprofit organization before a notary public.

120 (b) The following information must be provided in the
 121 power of attorney:

122 1. The name of the child.

123 2. The name of the parent or parents delegating authority
 124 for the care and custody of the child.

125 3. The name of the agent to whom powers are delegated.

126 4. A statement that the agent and all other appropriate
 127 members of the agent's household have successfully completed the
 128 background screening required under subsection (6).

129 5. A statement of the powers delegated to the agent for
 130 the care and custody of the child.

131 6. A statement that the delegation does not include
 132 authority to consent to the marriage or adoption of the child,
 133 the performance or inducement of an abortion on or for the
 134 child, or the termination of parental rights to the child.

135 7. The expiration date of the power of attorney, which may
 136 not be later than 6 months after the date of execution.

137 (c) Except as specifically provided under this section,
 138 such power of attorney is governed by this chapter.

139 (5) REVOCATION OF POWER OF ATTORNEY.—Either parent of the
 140 child may revoke the power of attorney if the parent has
 141 custodial rights to the child. Upon revocation of the power of
 142 attorney, the agent shall return the child to the custody of the
 143 revoking parent.

144 (6) QUALIFIED NONPROFIT ORGANIZATIONS.—

145 (a) A qualified nonprofit organization shall require a
 146 parent seeking its services to disclose whether the department
 147 is conducting an ongoing investigation of abuse or neglect
 148 involving the child or the parent and whether the department is
 149 otherwise providing services to the child or the parent. If the
 150 qualified nonprofit organization learns that the department has
 151 an open investigation of abuse or neglect involving the child or
 152 the parent and that the parent failed to disclose this
 153 information, the qualified nonprofit organization shall
 154 immediately notify the department.

155 (b) A qualified nonprofit organization shall train all
 156 agent families and volunteers, identify appropriate and safe

157 placements for children based on background screenings and home
 158 visits, and provide services and resources to support the child,
 159 parents, and agents authorized to provide temporary care for the
 160 child.

161 (c) All employees or volunteers of the qualified nonprofit
 162 organization who may have unsupervised contact with a child
 163 placed with an agent pursuant to this section, including the
 164 agent and all members of the agent's household who are 12 years
 165 of age or older, must undergo a background screening under s.
 166 39.0138, which shall include a state and national criminal
 167 history records check. The department shall inform the qualified
 168 nonprofit organization if such persons successfully pass the
 169 background screening under s. 39.0138.

170 (d) The qualified nonprofit organization shall maintain a
 171 separate record for each child placement assisted by the
 172 organization, which must include a copy of the department
 173 notification of screening results and the executed power of
 174 attorney, for at least 5 years after the expiration of the power
 175 of attorney.

176 (7) INFORMATION REGARDING SAFE FAMILY PROGRAMS.-During a
 177 child protective investigation that does not result in an out-
 178 of-home placement, if the child protective investigator deems it
 179 is appropriate, the department shall provide information to the
 180 parent about available community service programs that provide
 181 respite care, voluntary temporary placement pursuant to this
 182 section, or other support services for families in crisis.

183 (8) LIMITATIONS.—The execution of a power of attorney
 184 under this section does not:

185 (a) Constitute placing the child in foster care. An agent
 186 is not required to meet foster care licensing requirements under
 187 chapter 409, and an agent's home does not constitute a family
 188 foster home as defined in s. 409.175(2)(e) for purposes of
 189 caring for a child pursuant to this section.

190 (b) Limit the ability of a parent to appoint a guardian
 191 for a child pursuant to chapter 744.

192 (c) Change or modify parental or legal rights,
 193 obligations, or authority established by an existing court
 194 order, and does not deprive a parent of parental or legal
 195 rights, obligations, or authority regarding the custody,
 196 visitation, or support of the child unless determined by a court
 197 to be in the best interests of the child.

198 (d) Except as otherwise provided by law, or without other
 199 evidence, constitute abandonment, abuse, or neglect as defined
 200 in s. 39.01. This paragraph does not prevent the department or
 201 law enforcement from investigating allegations of abandonment,
 202 abuse, neglect, unlawful desertion of a child, or human
 203 trafficking.

204 (9) APPLICABILITY.—This section does not apply to a
 205 military power of attorney executed in accordance with 10 U.S.C.
 206 s. 1044b, as amended.

207 Section 3. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 403 Guardianship
SPONSOR(S): Children, Families & Seniors Subcommittee, Ahern
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 232

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|------------------|---|
| 1) Children, Families & Seniors Subcommittee | 11 Y, 0 N, As CS | Langston | Brazzell |
| 2) Health Care Appropriations Subcommittee | | Clark <i>Shc</i> | Pridgeon <i>PS</i> |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

CS/HB 403 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, including for the oversight of professional guardians. 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 retains its duties relating to registration and becomes responsible for periodic monitoring and the discipline of professional guardians.

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

The bill will have a significant negative fiscal impact on DOEA. DOEA will incur costs overseeing approximately 480 professional guardians in addition to the 60 public guardians it currently oversees. The bill will require 6 full-time equivalent (FTE) positions and \$698,153 in recurring and \$123,517 in nonrecurring funds from the General Revenue Fund. There is no fiscal impact on local governments.

The bill provides that it takes effect upon becoming law.

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 may be appointed guardian of a ward:

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

- Act within the scope of the authority granted by the court and as provided by law;

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); s. 744.361(1), F.S.

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

- Act in good faith;
- Not act in a manner contrary to the ward's best interests under the circumstances; and
- Use any special skills or expertise the guardian possesses when acting on behalf of the ward.

Additionally, s. 744.446, F.S., 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 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 482 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

⁷ S. 744.446(4), F.S.,

⁸ S. 744.012(7), F.S.

⁹ Department of Elder Affairs, *2016 Legislative Bill Analysis HB 403*, November 4, 2015 (on file with Health Care Appropriations 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 November 12, 2015).

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

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 The court is the only entity that can remove a guardian from a case to which he or she has been appointed.

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 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. | <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 ward's current finances. • Pay incidental expenses in the administration of the estate. |

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.

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.

| Powers Upon Court Approval, Continued | Powers Without Court Approval, Continued |
|---|---|
| <ul style="list-style-type: none"> • 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"> • 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. |

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;
- 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; and
- A guardian who is given authority over a ward's person shall, as appropriate under the circumstances:
 - Consider the expressed desires of the ward when making decisions that affect the ward;
 - Allow the ward to maintain contact with family and friends unless the guardian believes that such contact may cause harm to the ward;
 - Not restrict the physical liberty of the ward more than reasonably necessary to protect the ward or another person from serious physical injury, illness, or disease;
 - Assist the ward in developing or regaining capacity, if medically possible;
 - Notify the court if the guardian believes that the ward has regained capacity and that one or more of the rights that have been removed should be restored to the ward.;
 - To the extent applicable, make provision for the medical, mental, rehabilitative, or personal care services for the welfare of the ward;
 - To the extent applicable, acquire a clear understanding of the risks and benefits of a recommended course of health care treatment before making a health care decision;
 - Evaluate the ward's medical and health care options, financial resources, and desires when making residential decisions that are best suited for the current needs of the ward;
 - Advocate on behalf of the ward in institutional and other residential settings and regarding access to home and community-based services; and
 - When not inconsistent with the person's goals, needs, and preferences, acquire an understanding of the available residential options and give priority to home and other community-based services and settings.²¹

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.²²

²¹ S. 744.361, F.S.

²² Id.

Abuse or Neglect by Guardian

A guardian may not abuse, neglect, or exploit a ward.²³ A person who believes that a guardian is abusing, neglecting, or exploiting a ward shall report the incident to the central abuse hotline of the Department of Children and Families.²⁴ A guardian has committed exploitation when the guardian:

- Commits fraud in obtaining appointment as a guardian;
- Abuses his or her powers; or
- Wastes, embezzles, or intentionally mismanages the assets of the ward.²⁵

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 professional 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.²⁶

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.²⁷ SPGO has no authority to remove a guardian from cases to which he or she has been appointed; the court that appointed the guardian is the entity with the authority to remove a guardian. 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; and
- A failure to fulfill the guardianship education requirements.²⁸

Appointment of Professional Guardians

Except in the case of a standby or preneed guardian, the court is required to appoint professional guardians according to a rotation system. In each case when a court appoints a professional guardian and does not use a rotation system for such appointment, the court must make specific findings of fact stating why the person was selected as guardian in the particular matter involved.²⁹ The findings must reference the following factors that must be considered by the court:

- Whether the guardian is related by blood or marriage to the ward;
- Whether the guardian has educational, professional, or business experience relevant to the

²³ S. 744.359, F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Email from Department of Elder Affairs, *FW: DOEA Summary of Programs and Services (override)*, March 16, 2015. (on file with Children, Families, and Seniors Subcommittee staff).

²⁷ S. 744.1083(5), F.S.

²⁸ S. 744.477, F.S.

²⁹ S. 744.312(4)(a), F.S.

- nature of the services sought to be provided;
- Whether the guardian has the capacity to manage the financial resources involved;
- Whether the guardian has the ability to meet the requirements of the law and the unique needs of the individual case;
- The wishes expressed by an incapacitated person as to who shall be appointed guardian;
- The preference of a minor who is age 14 or over as to who should be appointed guardian;
- Any person designated as guardian in any will in which the ward is a beneficiary; and
- The wishes of the ward's next of kin, when the ward cannot express a preference.³⁰

Additionally, the court may not give preference to the appointment of a person based solely on the fact that such person was appointed by the court to serve as an emergency temporary guardian.³¹ When a professional guardian is appointed as an emergency temporary guardian that professional guardian may not be appointed as the permanent guardian of a ward unless one of the next of kin of the alleged incapacitated person or the ward requests that the professional guardian be appointed as permanent guardian.³² However, the court may waive this limitation if the special requirements of the guardianship demand that the court appoint a guardian because he or she has special talent or specific prior experience.³³

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.³⁴ 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.³⁵

Public Guardianship

The "Public Guardianship Act"³⁶ 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.³⁷ SPGO is responsible for appointing and overseeing Florida's public guardians.³⁸

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

³⁰ S. 744.312(2)-(3), F.S.

³¹ S. 744.312(5), F.S.

³² S. 744.312(4)(b), F.S.

³³ Id.

³⁴ S. 744.368, F.S.

³⁵ Id.

³⁶ S. 744.701, F.S.

³⁷ Department of Elder Affairs, *2016 Legislative Bill Analysis HB 403*, November 4, 2015 (on file with Health Care Appropriations Subcommittee staff).

³⁸ S. 744.7021, F.S.

guardian.³⁹ Once established, the executive director must create a list of persons best qualified to serve as the public guardian.⁴⁰ The public guardian is directed to maintain a staff or contract with professionally qualified individuals to carry out the guardianship functions.⁴¹ 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.⁴²

As of September 9, 2015, there were 60 public guardians, serving approximately 3,000 wards, overseen by SPGO. SPGO monitors the public guardians by conducting in-depth investigations into the local programs' administration and use of financial resources.⁴³ SPGO's fiscal monitoring includes investigating whether public guardians are spending state resources reasonably and whether they are spending the wards' assets reasonably.⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷ The committee received input from citizens that there was abuse, neglect, and misuse of ward's funds.⁴⁸ 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.⁴⁹

In 2004, DOEA released the Final Report of its Guardianship Task Force⁵⁰ which also advocated for additional oversight of professional guardians. These reports prompted enactment into law 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.^{51 52 53}

³⁹ S. 744.703(1), F.S.

⁴⁰ Id.

⁴¹ Id.

⁴² 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 (last visited November 12, 2015).

⁴³ These are entities that have contracted with SPGO to provide public guardian services.

⁴⁴ Email from Department of Elder Affairs, FW: DOEA Summary of Programs and Services (override), March 16, 2015. (on file with Children, Families, and Seniors Subcommittee staff).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, available at <http://flcourts.org/core/fileparse.php/260/url/guardianshipmonitoring.pdf> (last visited November 12, 2015).

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, available at

<http://elderaffairs.state.fl.us/doea/pubguard/GTF2004FinalReport.pdf> (last visited November 12, 2015).

⁵² 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/> (last visited November 12, 2015).

⁵³ 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> (last visited November 12, 2015).

Effect of Proposed Changes

CS/HB 403 substantially reorganizes ch. 744, F.S. The bill 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.

Additionally, the bill provides that a public guardian will only be provided to those persons whose needs cannot be met through a less restrictive means of intervention. However, it also permits a public guardian to serve as a limited guardian or as a guardian advocate for individuals with developmental disabilities under s. 393.12, F.S.

Office of Public and Professional Guardian (OPPG)

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), which is to facilitate the establishment of offices of public guardians for the purpose of providing guardianship services for incapacitated persons when no private guardian is available.

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 for the oversight of public and professional guardians. The executive director must review the standards and criteria for the education, registration, and certification of public and professional guardians in Florida. The executive director's oversight responsibilities for professional guardians include but are not limited to:

- Establishing standards of practice for public and professional guardians;
- Reviewing and approving the standards and criteria for the education, registration, and certification of public and professional guardians in Florida;
- Developing a guardianship training program curriculum that may be offered to all guardians;
- Developing and implementing a monitoring tool to use for periodic monitoring activities of professional guardians; however, this monitoring tool may not include a financial audit as required to be performed by the clerk of the circuit court under s. 744.368, F.S.;
- Developing procedures for the review of an allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians; and
- Establishing disciplinary proceedings, conducting hearings, and taking administrative action under ch. 120, F.S.

The executive director is required to establish standards of practice for public and professional guardians, by rule, no later than October 1, 2016, in consultation with professional guardianship associations and other interested stakeholders. Additionally, a draft of these rules must be provided to the Governor, Legislature, and Secretary of DOEA by August 1, 2016.

Regulation and Appointment of Professional Guardians

The bill provides that a court may not appoint any professional guardian who is not registered by OPPG.

Discipline of Professional Guardians

The bill directs OPPG to establish standards and procedures in rule by October 1, 2016, and provide a draft of the standards and procedures to the Governor, the Legislature and the Secretary of DOEA for review by August 1, 2016. These rules shall provide for OPPG to:

- Review and investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.

OPPG must establish disciplinary proceedings, conduct hearings, and take administrative action pursuant to ch. 120, F.S. Disciplinary actions may include, but are not limited to, requiring professional guardians to participate in additional educational courses, imposing additional monitoring of the guardianships being served by the professional guardian; and suspending and revoking the guardian's registration. If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.

OPPG is required to report any suspected abuse, neglect or exploitation of a vulnerable adult as a result of a complaint, or investigation of a complaint, to the Department of Children and Families' central abuse hotline.

The bill directs DOEA to adopt rules to implement the standards and procedures outlined above by October 1, 2016.

Additionally, the bill sets forth the grounds for discipline. Disciplinary action may be taken against a professional guardian for:

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

When OPPG finds that a professional guardian is guilty of any of the grounds for discipline, it may take action against that guardian by entering an order imposing one or more penalties on the professional guardian. When determining what action is appropriate against a professional guardian, prior to

consideration of any mitigation or rehabilitation for the professional guardian, OPPG must first consider what sanctions are necessary to safeguard the wards and protect the public. The bill provides legislative intent that the disciplinary guidelines should specify a meaningful range of penalties based on the severity and repetition of offenses and that minor violations should be treated differently than those which endanger the ward or the public. OPPG may impose any combination of the following sanctions:

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

The bill provides for ch. 120, F.S., rights for professional guardians who are subject to disciplinary procedures. OPPG is directed to adopt rules through DOEA that set forth the disciplinary guidelines applicable to each grounds for discipline, designate mitigating and aggravating circumstances, and otherwise administer this section.

Access to Records by OPPG

The bill provides OPPG access to financial audits prepared by the clerk of the court pursuant to s. 744.368, F.S., and held by the court that are necessary as part of an investigation of a guardian as a result of a complaint filed with OPPG.

Joining Forces Public Guardianship Grant Program

The bill amends the legislative intent for the existing Joining Forces for Public Guardianship matching grant program for the purpose of assisting counties in establishing and funding community-supported public guardianship programs.

Background Checks

The bill requires OPPG to adopt rules by October 1, 2016, that detail the acceptable methods for completing an electronic fingerprint criminal history record check and for completing a credit investigation for professional guardians and each employee of a professional guardian who has a fiduciary responsibility to the ward.

The bill takes effect upon becoming law.

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., relating to domicile of ward.
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., relating to change of ward's residence.
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:** Creates s. 744.20041, F.S., relating to grounds for discipline; penalties; enforcement.
- Section 13:** Amends s. 744.344, F.S., renumbering it as s. 744.2005, F.S., relating to order of appointment.
- Section 14:** 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 15:** Renumbers s. 744.704, F.S., as s. 744.2007, F.S., relating to powers and duties.
- Section 16:** Renumbers s. 744.705, F.S., as s. 744.2008, F.S., relating to costs of the public guardian.
- Section 17:** Amends s. 744.706, F.S., renumbering it as s. 744.2009, F.S., relating to preparation of budget.
- Section 18:** Amends s. 744.707, F.S., renumbering it as s. 744.2101, F.S., relating to procedures and rules.
- Section 19:** Renumbers s. 744.709, F.S., as s. 744.2102, F.S., relating to surety bond.
- Section 20:** Amends s. 744.708, F.S., renumbering it as s. 744.2103, F.S., relating to reports and standards.
- Section 21:** 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 22:** 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 23:** 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 24:** 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 25:** Amends s. 744.714, F.S., renumbering it as s. 744.2108, F.S., relating to eligibility.
- Section 26:** Amends s. 744.715, F.S., renumbering it as s. 744.2109, F.S., relating to grant application requirements; review criteria; award process.
- Section 27:** Amends s. 744.3135, F.S., relating to credit and criminal investigation.
- Section 28:** Repeals s. 744.701, F.S., relating to short title
- Section 29:** Repeals s. 744.702, F.S., relating to legislative intent.
- Section 30:** Repeals s. 744.7101, F.S., relating to short title.
- Section 31:** Repeals s. 744.711, F.S., relating to legislative findings and intent.
- Section 32:** Amends s. 400.148, F.S., relating to Medicaid "Up-or-Out" Quality of Care Contract Management Program.
- 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:** Amends s. 415.1102, F.S., relating to adult protection teams.
- Section 36:** Amends s. 744.309, F.S., relating to who may appoint guardian of a resident ward.
- Section 37:** Amends s. 744.524, F.S., relating to termination of guardianship on change of domicile of a resident ward.
- Section 38:** 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 a significant negative fiscal impact on DOEA. DOEA will see increased costs associated with regulating professional guardians. DOEA would need funding 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 OPGG under ch. 120, F.S. The number of wards represented by the 482 guardians is unknown at this time.

DOEA estimated the total fiscal impact on the department to be \$821,670. This includes \$698,153 in recurring costs for six full-time equivalent positions (FTEs) and their associated travel expenses for the oversight of the 482 professional guardians. DOEA estimates this number of FTEs is needed on the assumption that the current workload would at least double. The total also includes funding for contracted services for forensic auditors to investigate potential issues with professional guardians; DOEA estimates there will be 3-5 forensic cases per year. The recurring costs are:

- Five complaint investigators: \$298,471
- One senior attorney: \$88,453
- Travel costs: \$21,750
- Forensic auditors: \$289,479

Additionally, DOEA estimates a non-recurring cost of \$100,000 for a computer system to capture data related to the professional guardians activities, such as information related to complaints and investigations.

The Office of State Courts Administrator cannot accurately determine the fiscal impact of the bill because it cannot determine the revenues from increased filing fees nor the additional costs of appellate review of administrative actions.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Children, Families, and Seniors Subcommittee adopted two amendments. The first amendment specifies that a public guardian may also serve as a limited guardian or a guardian advocate under s. 393.12, F.S., for individuals with developmental disabilities. The second amendment creates s. 744.20041, F.S., which:

- Establishes grounds for disciplining a professional guardian.
- Establishes the range of penalties available for professional guardians who have violated this section.
- Establishes the procedures for determining whether a professional guardian is guilty of a violation and what sanction is appropriate.
- Sets forth legislative intent for the establishment of the disciplinary guidelines.
- Directs DOEA to adopt rules to implement this section.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

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., relating to
6 domicile of ward; transferring, renumbering, and
7 amending s. 744.202, F.S.; conforming a cross-
8 reference; renumbering s. 744.2025, F.S., relating to
9 change of ward's residence; renumbering and amending
10 s. 744.7021, F.S.; renaming the Statewide Public
11 Guardianship Office to the Office of Public and
12 Professional Guardians; revising the duties and
13 responsibilities of the executive director for the
14 Office of Public and Professional Guardians;
15 conforming provisions to changes made by the act;
16 renumbering and amending s. 744.1083, F.S.; providing
17 that a guardian has standing to seek judicial review
18 pursuant to ch. 120, F.S., if his or her registration
19 is denied; removing a provision authorizing the
20 executive director to suspend or revoke the
21 registration of a guardian who commits certain
22 violations; removing the requirement of written
23 notification to the chief judge of the judicial
24 circuit upon the executive director's denial,
25 suspension, or revocation of a registration;
26 conforming provisions to changes made by the act;

27 conforming a cross-reference; renumbering and amending
 28 s. 744.1085, F.S.; conforming provisions to changes
 29 made by the act; removing an obsolete provision;
 30 conforming a cross-reference; creating s. 744.2004,
 31 F.S.; requiring the Office of Public and Professional
 32 Guardians to establish certain procedures by a
 33 specified date; requiring the office to establish
 34 disciplinary proceedings, conduct hearings, and take
 35 administrative action pursuant to ch. 120, F.S.;

36 requiring the Department of Elderly Affairs to provide
 37 certain written information in disciplinary
 38 proceedings; requiring that certain findings and
 39 recommendations be made within a certain time;
 40 requiring the office, under certain circumstances, to
 41 make a specified recommendation to a court of
 42 competent jurisdiction; requiring the office to report
 43 determination or suspicion of abuse to the Department
 44 of Children and Families' central abuse hotline under
 45 specified circumstances; requiring the Department of
 46 Elderly Affairs to adopt rules; creating s. 744.20041,
 47 F.S.; providing grounds for discipline of professional
 48 guardians by the Office of Public and Professional
 49 Guardians; providing penalties; providing procedures
 50 for determining which disciplinary action is
 51 appropriate; providing legislative intent and purpose;
 52 authorizing the office to seek an injunction or a writ

53 | of mandamus against certain persons; providing for
 54 | permanent revocation of a professional guardian's
 55 | registration; providing procedures for suspension and
 56 | revocation of such registrations; directing the office
 57 | to adopt rules; renumbering and amending s. 744.344,
 58 | F.S.; making technical changes; renumbering and
 59 | amending s. 744.703, F.S.; conforming provisions to
 60 | changes made by the act; renumbering ss. 744.704 and
 61 | 744.705, F.S., relating to the powers and duties of
 62 | public guardians and the costs of public guardians,
 63 | respectively; renumbering and amending ss. 744.706 and
 64 | 744.707, F.S.; conforming provisions to changes made
 65 | by the act; renumbering s. 744.709, F.S., relating to
 66 | surety bonds; renumbering and amending s. 744.708,
 67 | F.S.; conforming provisions to changes made by the
 68 | act; renumbering and amending s. 744.7081, F.S.;
 69 | requiring that the Office of Public and Professional
 70 | Guardians be provided financial audits upon its
 71 | request as part of an investigation; conforming
 72 | provisions to changes made by the act; renumbering and
 73 | amending s. 744.7082, F.S.; conforming provisions to
 74 | changes made by the act; renumbering and amending s.
 75 | 744.712, F.S.; providing legislative intent;
 76 | conforming provisions; renumbering and amending ss.
 77 | 744.713, 744.714, and 744.715, F.S.; conforming
 78 | provisions to changes made by the act; amending s.

79 744.3135, F.S.; requiring the office to adopt rules by
80 a certain date; conforming provisions to changes made
81 by the act; repealing s. 744.701, F.S., relating to a
82 short title; repealing s. 744.702, F.S., relating to
83 legislative intent; repealing s. 744.7101, F.S.,
84 relating to a short title; repealing s. 744.711, F.S.,
85 relating to legislative findings and intent; amending
86 ss. 400.148 and 744.331, F.S.; conforming provisions
87 to changes made by the act; amending ss. 20.415,
88 415.1102, 744.309, and 744.524, F.S.; conforming
89 cross-references; making technical changes; providing
90 an effective date.

91
92 Be It Enacted by the Legislature of the State of Florida:

93
94 Section 1. The Division of Law Revision and Information is
95 directed to add ss. 744.1096-744.1098, Florida Statutes, created
96 by this act, to part I of chapter 744, Florida Statutes.

97 Section 2. The Division of Law Revision and Information is
98 directed to rename part II of chapter 744, Florida Statutes,
99 entitled "VENUE," as "PUBLIC AND PROFESSIONAL GUARDIANS,"
100 consisting of ss. 744.2001-744.2109, Florida Statutes.

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

103 Section 4. Section 744.1012, Florida Statutes, is amended
104 to read:

105 | 744.1012 Legislative intent.—The Legislature finds that:

106 | (1) ~~That~~ Adjudicating a person totally incapacitated and
 107 | in need of a guardian deprives such person of all her or his
 108 | civil and legal rights and that such deprivation may be
 109 | unnecessary.

110 | (2) ~~The Legislature further finds that~~ It is desirable to
 111 | make available the least restrictive form of guardianship to
 112 | assist persons who are only partially incapable of caring for
 113 | their needs and that alternatives to guardianship and less
 114 | restrictive means of assistance, including, but not limited to,
 115 | guardian advocates, should always be explored before an
 116 | individual's rights are removed through an adjudication of
 117 | incapacity.

118 | (3) By recognizing that every individual has unique needs
 119 | and differing abilities, ~~the Legislature declares that~~ it is the
 120 | purpose of this act to promote the public welfare by
 121 | establishing a system that permits incapacitated persons to
 122 | participate as fully as possible in all decisions affecting
 123 | them; that assists such persons in meeting the essential
 124 | requirements for their physical health and safety, in protecting
 125 | their rights, in managing their financial resources, and in
 126 | developing or regaining their abilities to the maximum extent
 127 | possible; and that accomplishes these objectives through
 128 | providing, in each case, the form of assistance that least
 129 | interferes with the legal capacity of a person to act in her or
 130 | his own behalf. This act shall be liberally construed to

131 accomplish this purpose.

132 (4) Private guardianship may be inadequate when there is
 133 no willing and responsible family member or friend, other
 134 person, bank, or corporation available to serve as guardian for
 135 an incapacitated person, and such person does not have adequate
 136 income or wealth for the compensation of a private guardian.

137 (5) Through the establishment of the Office of Public and
 138 Professional Guardians, the Legislature intends to permit the
 139 establishment of offices of public guardians for the purpose of
 140 providing guardianship services for incapacitated persons when
 141 no private guardian is available.

142 (6) A public guardian will be provided only to those
 143 persons whose needs cannot be met through less restrictive means
 144 of intervention. A public guardian may also serve in the
 145 capacity of a limited guardian under s. 744.102, or guardian
 146 advocate under s. 393.12, when the public guardian is the
 147 guardian of last resort as described in subsection (4).

148 Section 5. Section 744.201, Florida Statutes, is
 149 renumbered as section 744.1096, Florida Statutes.

150 Section 6. Section 744.202, Florida Statutes, is
 151 renumbered as section 744.1097, Florida Statutes, and subsection
 152 (3) of that section is amended, to read:

153 744.1097 ~~744.202~~ Venue.—

154 (3) When the residence of an incapacitated person is
 155 changed to another county, the guardian shall petition to have
 156 the venue of the guardianship changed to the county of the

157 | acquired residence, except as provided in s. 744.1098 ~~s.~~
 158 | ~~744.2025~~.

159 | Section 7. Section 744.2025, Florida Statutes, is
 160 | renumbered as section 744.1098, Florida Statutes.

161 | Section 8. Section 744.7021, Florida Statutes, is
 162 | renumbered as section 744.2001, Florida Statutes, and amended to
 163 | read:

164 | 744.2001 ~~744.7021~~ ~~Statewide Public Guardianship~~ Office of
 165 | Public and Professional Guardians.-There is hereby created the
 166 | ~~Statewide Public Guardianship~~ Office of Public and Professional
 167 | Guardians within the Department of Elderly Affairs.

168 | (1) The Secretary of Elderly Affairs shall appoint the
 169 | executive director, who shall be the head of the ~~Statewide~~
 170 | ~~Public Guardianship~~ Office of Public and Professional Guardians.
 171 | The executive director must be a member of The Florida Bar,
 172 | knowledgeable of guardianship law and of the social services
 173 | available to meet the needs of incapacitated persons, shall
 174 | serve on a full-time basis, and shall personally, or through a
 175 | representative ~~representatives~~ of the office, carry out the
 176 | purposes and functions of the ~~Statewide Public Guardianship~~
 177 | Office of Public and Professional Guardians in accordance with
 178 | state and federal law. The executive director shall serve at the
 179 | pleasure of and report to the secretary.

180 | (2) The executive director shall, within available
 181 | resources:

182 | (a) Have oversight responsibilities for all public and

183 | professional guardians.

184 | (b) Establish standards of practice for public and
 185 | professional guardians by rule, in consultation with
 186 | professional guardianship associations and other interested
 187 | stakeholders, no later than October 1, 2016. The executive
 188 | director shall provide a draft of the standards to the Governor,
 189 | the Legislature, and the secretary for review by August 1, 2016.

190 | (c) Review and approve the standards and criteria for the
 191 | education, registration, and certification of public and
 192 | professional guardians in Florida.

193 | (3) The executive director's oversight responsibilities of
 194 | professional guardians must be finalized by October 1, 2016, and
 195 | shall include, but are not limited to:

196 | (a) Developing and implementing a monitoring tool to
 197 | ensure compliance of professional guardians with the standards
 198 | of practice established by the Office of Public and Professional
 199 | Guardians. This monitoring tool may not include a financial
 200 | audit as required by the clerk of the circuit court under s.
 201 | 744.368.

202 | (b) Developing procedures, in consultation with
 203 | professional guardianship associations and other interested
 204 | stakeholders, for the review of an allegation that a
 205 | professional guardian has violated the standards of practice
 206 | established by the Office of Public and Professional Guardians
 207 | governing the conduct of professional guardians.

208 | (c) Establishing disciplinary proceedings, conducting

209 | hearings, and taking administrative action pursuant to chapter
 210 | 120.

211 | (4) The executive director's oversight responsibilities of
 212 | public guardians shall include, but are not limited to:

213 | (a) Reviewing ~~The executive director shall review~~ the
 214 | current public guardian programs in Florida and other states.

215 | (b) Developing ~~The executive director,~~ in consultation
 216 | with local guardianship offices and other interested
 217 | stakeholders, shall develop statewide performance measures ~~and~~
 218 | ~~standards.~~

219 | (c) Reviewing ~~The executive director shall review~~ the
 220 | various methods of funding public guardianship programs, the
 221 | kinds of services being provided by such programs, and the
 222 | demographics of the wards. In addition, the executive director
 223 | shall review and make recommendations regarding the feasibility
 224 | of recovering a portion or all of the costs of providing public
 225 | guardianship services from the assets or income of the wards.

226 | (d) By January 1 of each year, providing ~~the executive~~
 227 | ~~director shall provide~~ a status report and ~~provide further~~
 228 | recommendations to the secretary which ~~that~~ address the need for
 229 | public guardianship services and related issues.

230 | (e) Developing a guardianship training program curriculum
 231 | that may be offered to all guardians, whether public or private.

232 | (5)(e) ~~The executive director~~ may provide assistance to
 233 | local governments or entities in pursuing grant opportunities.
 234 | The executive director shall review and make recommendations in

235 the annual report on the availability and efficacy of seeking
 236 Medicaid matching funds. The executive director shall diligently
 237 seek ways to use existing programs and services to meet the
 238 needs of public wards.

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

243 (6)~~(3)~~ The executive director may conduct or contract for
 244 demonstration projects authorized by the Department of Elderly
 245 Affairs, within funds appropriated or through gifts, grants, or
 246 contributions for such purposes, to determine the feasibility or
 247 desirability of new concepts of organization, administration,
 248 financing, or service delivery designed to preserve the civil
 249 and constitutional rights of persons of marginal or diminished
 250 capacity. Any gifts, grants, or contributions for such purposes
 251 shall be deposited in the Department of Elderly Affairs
 252 Administrative Trust Fund.

253 Section 9. Section 744.1083, Florida Statutes, is
 254 renumbered as section 744.2002, Florida Statutes, subsections
 255 (1) through (5) of that section are amended, and subsections (7)
 256 and (10) of that section are republished, to read:

257 744.2002 ~~744.1083~~ Professional guardian registration.—

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

261 (2) Annual registration shall be made on forms furnished
 262 by the ~~Statewide Public Guardianship~~ Office of Public and
 263 Professional Guardians and accompanied by the applicable
 264 registration fee as determined by rule. The fee may not exceed
 265 \$100.

266 (3) Registration must include the following:

267 (a) Sufficient information to identify the professional
 268 guardian, as follows:

269 1. If the professional guardian is a natural person, the
 270 name, address, date of birth, and employer identification or
 271 social security number of the person.

272 2. If the professional guardian is a partnership or
 273 association, the name, address, and employer identification
 274 number of the entity.

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

277 (c) Sufficient information to distinguish a guardian
 278 providing guardianship services as a public guardian,
 279 individually, through partnership, corporation, or any other
 280 business organization.

281 (4) Prior to registering a professional guardian, the
 282 ~~Statewide Public Guardianship~~ Office of Public and Professional
 283 Guardians must receive and review copies of the credit and
 284 criminal investigations conducted under s. 744.3135. The credit
 285 and criminal investigations must have been completed within the
 286 previous 2 years.

287 (5) The executive director of the office may deny
 288 registration to a professional guardian if the executive
 289 director determines that the guardian's proposed registration,
 290 including the guardian's credit or criminal investigations,
 291 indicates that registering the professional guardian would
 292 violate any provision of this chapter. If a guardian's proposed
 293 registration is denied, the guardian has standing to seek
 294 judicial review of the denial pursuant to chapter 120 ~~If a~~
 295 ~~guardian who is currently registered with the office violates a~~
 296 ~~provision of this chapter, the executive director of the office~~
 297 ~~may suspend or revoke the guardian's registration. If the~~
 298 ~~executive director denies registration to a professional~~
 299 ~~guardian or suspends or revokes a professional guardian's~~
 300 ~~registration, the Statewide Public Guardianship Office must send~~
 301 ~~written notification of the denial, suspension, or revocation to~~
 302 ~~the chief judge of each judicial circuit in which the guardian~~
 303 ~~was serving on the day of the office's decision to deny,~~
 304 ~~suspend, or revoke the registration.~~

305 (7) A trust company, a state banking corporation or state
 306 savings association authorized and qualified to exercise
 307 fiduciary powers in this state, or a national banking
 308 association or federal savings and loan association authorized
 309 and qualified to exercise fiduciary powers in this state, may,
 310 but is not required to, register as a professional guardian
 311 under this section. If a trust company, state banking
 312 corporation, state savings association, national banking

313 association, or federal savings and loan association described
 314 in this subsection elects to register as a professional guardian
 315 under this subsection, the requirements of subsections (3) and
 316 (4) do not apply and the registration must include only the
 317 name, address, and employer identification number of the
 318 registrant, the name and address of its registered agent, if
 319 any, and the documentation described in paragraph (3)(b).

320 (10) A state college or university or an independent
 321 college or university that is located and chartered in Florida,
 322 that is accredited by the Commission on Colleges of the Southern
 323 Association of Colleges and Schools or the Accrediting Council
 324 for Independent Colleges and Schools, and that confers degrees
 325 as defined in s. 1005.02(7) may, but is not required to,
 326 register as a professional guardian under this section. If a
 327 state college or university or independent college or university
 328 elects to register as a professional guardian under this
 329 subsection, the requirements of subsections (3) and (4) do not
 330 apply and the registration must include only the name, address,
 331 and employer identification number of the registrant.

332 Section 10. Section 744.1085, Florida Statutes, is
 333 renumbered as section 744.2003, Florida Statutes, subsections
 334 (3), (6), and (9) of that section are amended, and subsection
 335 (8) of that section is republished, to read:

336 744.2003 ~~744.1085~~ Regulation of professional guardians;
 337 application; bond required; educational requirements.-

338 (3) Each professional guardian defined in s. 744.102(17)

339 and public guardian must receive a minimum of 40 hours of
 340 instruction and training. Each professional guardian must
 341 receive a minimum of 16 hours of continuing education every 2
 342 calendar years after the year in which the initial 40-hour
 343 educational requirement is met. The instruction and education
 344 must be completed through a course approved or offered by the
 345 ~~Statewide Public Guardianship~~ Office of Public and Professional
 346 Guardians. The expenses incurred to satisfy the educational
 347 requirements prescribed in this section may not be paid with the
 348 assets of any ward. This subsection does not apply to any
 349 attorney who is licensed to practice law in this state or an
 350 institution acting as guardian under s. 744.2002(7).

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

355 (a) The Department of Elderly Affairs shall determine the
 356 minimum examination score necessary for passage of guardianship
 357 examinations.

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

360 (c) The Department of Elderly Affairs or its contractor
 361 shall charge an examination fee for the actual costs of the
 362 development and the administration of the examination. The
 363 examination fee for a guardian may not ~~to~~ exceed \$500.

364 (d) The Department of Elderly Affairs may recognize

365 passage of a national guardianship examination in lieu of all or
 366 part of the examination approved by the Department of Elderly
 367 Affairs, except that all professional guardians must take and
 368 pass an approved examination section related to Florida law and
 369 procedure.

370 (8) The Department of Elderly Affairs shall waive the
 371 examination requirement in subsection (6) if a professional
 372 guardian can provide:

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

375 (b) A letter from a circuit judge before whom the
 376 professional guardian practiced at least 1 year which states
 377 that the professional guardian had demonstrated to the court
 378 competency as a professional guardian.

379 (9) ~~After July 1, 2004,~~ The court may ~~shall~~ not appoint
 380 any professional guardian who is ~~has~~ not registered by the
 381 Office of Public and Professional Guardians ~~met the requirements~~
 382 ~~of this section and s. 744.1083.~~

383 Section 11. Section 744.2004, Florida Statutes, is created
 384 to read:

385 744.2004 Complaints; disciplinary proceedings; penalties;
 386 enforcement.-

387 (1) By October 1, 2016, the Office of Public and
 388 Professional Guardians shall establish procedures to:

389 (a) Review and, if determined legally sufficient,
 390 investigate any complaint that a professional guardian has

391 violated the standards of practice established by the Office of
 392 Public and Professional Guardians governing the conduct of
 393 professional guardians. A complaint is legally sufficient if it
 394 contains ultimate facts that show a violation of a standard of
 395 practice by a professional guardian has occurred.

396 (b) Initiate an investigation no later than 10 business
 397 days after the Office of Public and Professional Guardians
 398 receives a complaint.

399 (c) Complete and provide initial investigative findings
 400 and recommendations, if any, to the professional guardian and
 401 the person who filed the complaint within 60 days of receipt.

402 (d) Obtain supporting information or documentation to
 403 determine the legal sufficiency of a complaint.

404 (e) Interview a ward, family member, or interested party
 405 to determine the legal sufficiency of a complaint.

406 (f) Dismiss any complaint if, at any time after legal
 407 sufficiency is determined, it is found there is insufficient
 408 evidence to support the allegations contained in the complaint.

409 (g) Coordinate, to the greatest extent possible, with the
 410 clerks of court to avoid duplication of duties with regard to
 411 the financial audits prepared by the clerks pursuant to s.
 412 744.368.

413 (2) The Office of Public and Professional Guardians shall
 414 establish disciplinary proceedings, conduct hearings, and take
 415 administrative action pursuant to chapter 120. Disciplinary
 416 actions may include, but are not limited to, requiring a

417 professional guardian to participate in additional educational
 418 courses provided or approved by the Office of Public and
 419 Professional Guardians, imposing additional monitoring by the
 420 office of the guardianships to which the professional guardian
 421 is appointed, and suspension or revocation of a professional
 422 guardian's registration.

423 (3) In any disciplinary proceeding that may result in the
 424 suspension or revocation of a professional guardian's
 425 registration, the Department of Elderly Affairs shall provide
 426 the professional guardian and the person who filed the
 427 complaint:

428 (a) A written explanation of how an administrative
 429 complaint is resolved by the disciplinary process.

430 (b) A written explanation of how and when the person may
 431 participate in the disciplinary process.

432 (c) A written notice of any hearing before the Division of
 433 Administrative Hearings at which final agency action may be
 434 taken.

435 (4) If the office makes a final determination to suspend
 436 or revoke the professional guardian's registration, it must
 437 provide such determination to the court of competent
 438 jurisdiction for any guardianship case to which the professional
 439 guardian is currently appointed.

440 (5) If the office determines or has reasonable cause to
 441 suspect that a vulnerable adult has been or is being abused,
 442 neglected, or exploited as a result of a filed complaint or

443 during the course of an investigation of a complaint, it shall
 444 immediately report such determination or suspicion to the
 445 central abuse hotline established and maintained by the
 446 Department of Children and Families pursuant to s. 415.103.

447 (6) By October 1, 2016, the Department of Elderly Affairs
 448 shall adopt rules to implement the provisions of this section.

449 Section 12. Section 744.20041, Florida Statutes, is
 450 created to read:

451 744.20041 Grounds for discipline; penalties; enforcement.-

452 (1) It is the intent of the Legislature that the
 453 disciplinary guidelines in this section specify a meaningful
 454 range of designated penalties based upon the severity and
 455 repetition of specific offenses and that minor violations be
 456 distinguished from those which endanger the health, safety, or
 457 welfare of the ward or the public; that such guidelines provide
 458 reasonable and meaningful notice to the public of likely
 459 penalties which may be imposed for prohibited conduct; and that
 460 such penalties be consistently applied by the Office of Public
 461 and Professional Guardians.

462 (2) The purpose of this section is to facilitate uniform
 463 discipline for those actions made punishable under this section
 464 and, to this end, a reference to this section constitutes a
 465 general reference under the doctrine of incorporation by
 466 reference.

467 (3) The following acts by a professional guardian
 468 constitute grounds for which the disciplinary actions specified

469 in subsection (4) may be taken:

470 (a) Making misleading, deceptive, or fraudulent
471 representations in or related to the practice of guardianship.

472 (b) Violating any rule governing guardians or
473 guardianships adopted by the Office of Public and Professional
474 Guardians.

475 (c) Being convicted or found guilty of, or entering a plea
476 of guilty or nolo contendere to, regardless of adjudication, a
477 crime in any jurisdiction which relates to the practice of, or
478 the ability to practice as, a professional guardian.

479 (d) Failing to comply with the educational course
480 requirements contained in s. 744.2003.

481 (e) Having a registration, a license, or the authority to
482 practice a regulated profession revoked, suspended, or otherwise
483 acted against, including the denial of registration or
484 licensure, by the registering or licensing authority of any
485 jurisdiction, including its agencies or subdivisions, for a
486 violation of Florida law. The registering or licensing
487 authority's acceptance of a relinquishment of registration or
488 licensure, stipulation, consent order, or other settlement,
489 offered in response to or in anticipation of the filing of
490 charges against the registration or license, shall be construed
491 as action against the registration or license.

492 (f) Knowingly filing a false report or complaint with the
493 Office of Public and Professional Guardians against another
494 guardian.

495 (g) Attempting to obtain, obtaining, attempting to renew,
 496 or renewing a registration or license to practice a profession
 497 by bribery, by fraudulent misrepresentation, or as a result of
 498 an error by the Office of Public and Professional Guardians
 499 which error is known and not disclosed to the Office of Public
 500 and Professional Guardians.

501 (h) Failing to report to the Office of Public and
 502 Professional Guardians any person who the professional guardian
 503 knows is in violation of this chapter or the rules of the Office
 504 of Public and Professional Guardians.

505 (i) Failing to perform any statutory or legal obligation
 506 placed upon a professional guardian.

507 (j) Making or filing a report or record which the
 508 professional guardian knows to be false, intentionally or
 509 negligently failing to file a report or record required by state
 510 or federal law, or willfully impeding or obstructing another
 511 person's attempt to file a report or record required by state or
 512 federal law. Such reports or records shall include only those
 513 that are signed in the guardian's capacity as a professional
 514 guardian.

515 (k) Using the position of guardian for the purpose of
 516 financial gain by the guardian or for a third party other than
 517 the funds awarded to the guardian by the court pursuant to s.
 518 744.108.

519 (l) Violating a lawful order, or failing to comply with a
 520 lawfully issued subpoena, of the Office of Public and

521 | Professional Guardians.

522 | (m) Improperly interfering with an investigation or

523 | inspection authorized by statute, by rule, or with any

524 | disciplinary proceeding.

525 | (n) Using the guardian relationship to engage or attempt

526 | to engage the ward, or an immediate family member or

527 | representative of the ward, in verbal, written, electronic, or

528 | physical sexual activity.

529 | (o) Failing to report to the Office of Public and

530 | Professional Guardians in writing within 30 days after being

531 | convicted or found guilty of, or entering a plea of nolo

532 | contendere to, regardless of adjudication, a crime in any

533 | jurisdiction.

534 | (p) Being unable to perform the functions of a guardian

535 | with reasonable skill by reason of illness or use of alcohol,

536 | drugs, narcotics, chemicals, or any other type of material or as

537 | a result of any mental or physical condition.

538 | (q) Failing to post and maintain a blanket fiduciary bond

539 | pursuant to the requirements for such bond in s. 744.2003.

540 | (r) Failing to maintain all records pertaining to a

541 | guardianship for a period of time after the court has closed the

542 | guardianship matter.

543 | (s) Violating any provision of this chapter or any rules

544 | adopted pursuant to this chapter.

545 | (4) When the Office of Public and Professional Guardians

546 | finds any professional guardian guilty of the grounds set forth

547 in subsection (3), it may enter an order imposing one or more of
548 the following penalties:

549 (a) Refusal to register an applicant for registration as a
550 professional guardian.

551 (b) Suspension or permanent revocation of a professional
552 guardian's registration.

553 (c) Issuance of a reprimand or letter of concern.

554 (d) Requirement that the professional guardian undergo
555 treatment, attend continuing education courses, submit to
556 reexamination, or satisfy any terms which are reasonably
557 tailored to the violations found.

558 (e) Requirement that the professional guardian pay
559 restitution of any funds obtained, disbursed, or obtained
560 through a violation of a statute, rule, or other legal authority
561 to a ward or the ward's estate, if applicable.

562 (f) Requirement that the professional guardian undergo
563 remedial education.

564 (5) In determining which disciplinary action is
565 appropriate, the Office of Public and Professional Guardians
566 must first consider what sanctions are necessary to safeguard
567 wards and protect the public. Only after those sanctions are
568 imposed may the Office of Public and Professional Guardians
569 consider and include in the order requirements designed to
570 mitigate the circumstances and rehabilitate the professional
571 guardian.

572 (6) The Office of Public and Professional Guardians shall

573 | adopt by rule and periodically review the disciplinary
 574 | guidelines applicable to each ground for disciplinary action
 575 | which may be imposed by the Office of Public and Professional
 576 | Guardians pursuant to this chapter.

577 | (7) The Office of Public and Professional Guardians shall
 578 | designate by rule possible mitigating and aggravating
 579 | circumstances, if applicable, and the variation and range of
 580 | penalties permitted for such circumstances.

581 | (a) The administrative law judge, in recommending
 582 | penalties in any recommended order, must follow the disciplinary
 583 | guidelines established by the Office of Public and Professional
 584 | Guardians and must state in writing any mitigating or
 585 | aggravating circumstances upon which a recommended penalty is
 586 | based, if such circumstances cause the administrative law judge
 587 | to recommend a penalty other than that provided in the
 588 | disciplinary guidelines.

589 | (b) A specific finding in the final order of mitigating or
 590 | aggravating circumstances shall allow the Office of Public and
 591 | Professional Guardians to impose a penalty other than that
 592 | provided in the disciplinary guidelines.

593 | (8) In addition to, or in lieu of, any other remedy or
 594 | criminal prosecution, the Office of Public and Professional
 595 | Guardians may file a proceeding in the name of the state seeking
 596 | issuance of an injunction or a writ of mandamus against any
 597 | person who violates this chapter or a provision of law with
 598 | respect to professional guardians or the rules adopted pursuant

599 thereto.

600 (9) Notwithstanding any provision of chapter 120, if the
 601 Office of Public and Professional Guardians determines that
 602 revocation of a professional guardian's registration is the
 603 appropriate penalty, the revocation shall be permanent.

604 (10) If the Office of Public and Professional Guardians
 605 makes a final determination to suspend or revoke the
 606 professional guardian's registration, it must provide the
 607 determination to the court of competent jurisdiction for any
 608 guardianship case to which the professional guardian is
 609 currently appointed.

610 (11) The Office of Public and Professional Guardians shall
 611 adopt rules to administer the requirements of this section.

612 Section 13. Section 744.344, Florida Statutes, is
 613 transferred, renumbered as section 744.2005, Florida Statutes,
 614 and amended to read:

615 744.2005 ~~744.344~~ Order of appointment.—

616 (1) The court may hear testimony on the question of who is
 617 entitled to preference in the appointment of a guardian. Any
 618 interested person may intervene in the proceedings.

619 (2) The order appointing a guardian must state the nature
 620 of the guardianship as either plenary or limited. If limited,
 621 the order must state that the guardian may exercise only those
 622 delegable rights which have been removed from the incapacitated
 623 person and specifically delegated to the guardian. The order
 624 shall state the specific powers and duties of the guardian.

625 (3)~~(2)~~ The order appointing a guardian must be consistent
 626 with the incapacitated person's welfare and safety, must be the
 627 least restrictive appropriate alternative, and must reserve to
 628 the incapacitated person the right to make decisions in all
 629 matters commensurate with the person's ability to do so.

630 (4)~~(3)~~ If a petition for appointment of a guardian has
 631 been filed, an order appointing a guardian must be issued
 632 contemporaneously with the order adjudicating the person
 633 incapacitated. The order must specify the amount of the bond to
 634 be given by the guardian and must state specifically whether the
 635 guardian must place all, or part, of the property of the ward in
 636 a restricted account in a financial institution designated
 637 pursuant to s. 69.031.

638 (5)~~(4)~~ If a petition for the appointment of a guardian has
 639 not been filed or ruled upon at the time of the hearing on the
 640 petition to determine capacity, the court may appoint an
 641 emergency temporary guardian in the manner and for the purposes
 642 specified in s. 744.3031.

643 (6)~~(5)~~ A plenary guardian shall exercise all delegable
 644 rights and powers of the incapacitated person.

645 (7)~~(6)~~ A person for whom a limited guardian has been
 646 appointed retains all legal rights except those that ~~which~~ have
 647 been specifically granted to the guardian in the court's written
 648 order.

649 Section 14. Section 744.703, Florida Statutes, is
 650 renumbered as section 744.2006, Florida Statutes, and

651 subsections (1) and (6) of that section are amended, to read:

652 744.2006 ~~744.703~~ Office of Public and Professional
 653 Guardians ~~guardian~~; appointment, notification.-

654 (1) The executive director of the ~~Statewide Public~~
 655 ~~Guardianship~~ Office of Public and Professional Guardians, after
 656 consultation with the chief judge and other circuit judges
 657 within the judicial circuit and with appropriate advocacy groups
 658 and individuals and organizations who are knowledgeable about
 659 the needs of incapacitated persons, may establish, within a
 660 county in the judicial circuit or within the judicial circuit,
 661 one or more offices of public guardian and if so established,
 662 shall create a list of persons best qualified to serve as the
 663 public guardian, who have been investigated pursuant to s.
 664 744.3135. The public guardian must have knowledge of the legal
 665 process and knowledge of social services available to meet the
 666 needs of incapacitated persons. The public guardian shall
 667 maintain a staff or contract with professionally qualified
 668 individuals to carry out the guardianship functions, including
 669 an attorney who has experience in probate areas and another
 670 person who has a master's degree in social work, or a
 671 gerontologist, psychologist, registered nurse, or nurse
 672 practitioner. A public guardian that is a nonprofit corporate
 673 guardian under s. 744.309(5) must receive tax-exempt status from
 674 the United States Internal Revenue Service.

675 (6) Public guardians who have been previously appointed by
 676 a chief judge prior to the effective date of this act pursuant

677 | to this section may continue in their positions until the
 678 | expiration of their term pursuant to their agreement. However,
 679 | oversight of all public guardians shall transfer to the
 680 | ~~Statewide Public Guardianship~~ Office of Public and Professional
 681 | Guardians upon the effective date of this act. The executive
 682 | director of the ~~Statewide Public Guardianship~~ Office of Public
 683 | and Professional Guardians shall be responsible for all future
 684 | appointments of public guardians pursuant to this act.

685 | Section 15. Section 744.704, Florida Statutes, is
 686 | renumbered as section 744.2007, Florida Statutes.

687 | Section 16. Section 744.705, Florida Statutes, is
 688 | renumbered as section 744.2008, Florida Statutes.

689 | Section 17. Section 744.706, Florida Statutes, is
 690 | renumbered as section 744.2009, Florida Statutes, and amended to
 691 | read:

692 | 744.2009 ~~744.706~~ Preparation of budget.—Each public
 693 | guardian, whether funded in whole or in part by money raised
 694 | through local efforts, grants, or any other source or whether
 695 | funded in whole or in part by the state, shall prepare a budget
 696 | for the operation of the office of public guardian to be
 697 | submitted to the ~~Statewide Public Guardianship~~ Office of Public
 698 | and Professional Guardians. As appropriate, the ~~Statewide Public~~
 699 | ~~Guardianship~~ Office of Public and Professional Guardians will
 700 | include such budgetary information in the Department of Elderly
 701 | Affairs' legislative budget request. The office of public
 702 | guardian shall be operated within the limitations of the General

703 Appropriations Act and any other funds appropriated by the
 704 Legislature to that particular judicial circuit, subject to the
 705 provisions of chapter 216. The Department of Elderly Affairs
 706 shall make a separate and distinct request for an appropriation
 707 for the ~~Statewide Public Guardianship~~ Office of Public and
 708 Professional Guardians. However, this section ~~may~~ shall not be
 709 construed to preclude the financing of any operations of the
 710 office of ~~the~~ public guardian by moneys raised through local
 711 effort or through the efforts of the ~~Statewide Public~~
 712 ~~Guardianship~~ Office of Public and Professional Guardians.

713 Section 18. Section 744.707, Florida Statutes, is
 714 renumbered as section 744.2101, Florida Statutes, and amended to
 715 read:

716 744.2101 ~~744.707~~ Procedures and rules.—The public
 717 guardian, subject to the oversight of the ~~Statewide Public~~
 718 ~~Guardianship~~ Office of Public and Professional Guardians, is
 719 authorized to:

720 (1) Formulate and adopt necessary procedures to assure the
 721 efficient conduct of the affairs of the ward and general
 722 administration of the office and staff.

723 (2) Contract for services necessary to discharge the
 724 duties of the office.

725 (3) Accept the services of volunteer persons or
 726 organizations and provide reimbursement for proper and necessary
 727 expenses.

728 Section 19. Section 744.709, Florida Statutes, is

729 renumbered as section 744.2102, Florida Statutes.

730 Section 20. Section 744.708, Florida Statutes, is
 731 renumbered as section 744.2103, Florida Statutes, and
 732 subsections (3), (4), (5), and (7) of that section are amended,
 733 to read:

734 744.2103 ~~744.708~~ Reports and standards.—

735 (3) A public guardian shall file an annual report on the
 736 operations of the office of public guardian, in writing, by
 737 September 1 for the preceding fiscal year with the ~~Statewide~~
 738 ~~Public Guardianship~~ Office of Public and Professional Guardians,
 739 which shall have responsibility for supervision of the
 740 operations of the office of public guardian.

741 (4) Within 6 months of his or her appointment as guardian
 742 of a ward, the public guardian shall submit to the clerk of the
 743 court for placement in the ward's guardianship file and to the
 744 executive director of the ~~Statewide Public Guardianship~~ Office
 745 of Public and Professional Guardians a report on his or her
 746 efforts to locate a family member or friend, other person, bank,
 747 or corporation to act as guardian of the ward and a report on
 748 the ward's potential to be restored to capacity.

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

754 (b) In addition to regular monitoring activities, the

755 ~~Statewide Public Guardianship~~ Office of Public and Professional
 756 Guardians shall conduct an investigation into the practices of
 757 each office of public guardian related to the managing of each
 758 ward's personal affairs and property. If feasible, the
 759 investigation shall be conducted in conjunction with the
 760 financial audit of each office of public guardian under
 761 paragraph (a).

762 (7) The ratio for professional staff to wards shall be 1
 763 professional to 40 wards. The ~~Statewide Public Guardianship~~
 764 Office of Public and Professional Guardians may increase or
 765 decrease the ratio after consultation with the local public
 766 guardian and the chief judge of the circuit court. The basis for
 767 the decision to increase or decrease the prescribed ratio must
 768 be included in the annual report to the secretary.

769 Section 21. Section 744.7081, Florida Statutes, is
 770 renumbered as section 744.2104, Florida Statutes, and amended to
 771 read:

772 744.2104 ~~744.7081~~ Access to records by the Statewide
 773 ~~Public Guardianship~~ Office of Public and Professional Guardians;
 774 confidentiality.—

775 (1) Notwithstanding any other provision of law to the
 776 contrary, any medical, financial, or mental health records held
 777 by an agency, or the court and its agencies, or financial audits
 778 prepared by the clerk of the court pursuant to s. 744.368 and
 779 held by the court, which are necessary as part of an
 780 investigation of a guardian as a result of a complaint filed

781 with the Office of Public and Professional Guardians to evaluate
 782 the public guardianship system, to assess the need for
 783 additional public guardianship, or to develop required reports,
 784 shall be provided to the ~~Statewide Public Guardianship~~ Office of
 785 Public and Professional Guardians upon that office's request.
 786 Any confidential or exempt information provided to the ~~Statewide~~
 787 ~~Public Guardianship~~ Office of Public and Professional Guardians
 788 shall continue to be held confidential or exempt as otherwise
 789 provided by law.

790 (2) All records held by the ~~Statewide Public Guardianship~~
 791 Office of Public and Professional Guardians relating to the
 792 medical, financial, or mental health of vulnerable adults as
 793 defined in chapter 415, persons with a developmental disability
 794 as defined in chapter 393, or persons with a mental illness as
 795 defined in chapter 394, shall be confidential and exempt from s.
 796 119.07(1) and s. 24(a), Art. I of the State Constitution.

797 Section 22. Section 744.7082, Florida Statutes, is
 798 renumbered as section 744.2105, Florida Statutes, and
 799 subsections (1) through (5) and (8) of that section are amended,
 800 to read:

801 744.2105 ~~744.7082~~ Direct-support organization; definition;
 802 use of property; board of directors; audit; dissolution.-

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

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

809 (b) Organized and operated to conduct programs and
 810 activities; to raise funds; to request and receive grants,
 811 gifts, and bequests of moneys; to acquire, receive, hold,
 812 invest, and administer, in its own name, securities, funds,
 813 objects of value, or other property, real or personal; and to
 814 make expenditures to or for the direct or indirect benefit of
 815 the ~~Statewide Public Guardianship~~ Office of Public and
 816 Professional Guardians; and

817 (c) Determined by the ~~Statewide Public Guardianship~~ Office
 818 of Public and Professional Guardians to be consistent with the
 819 goals of the office, in the best interests of the state, and in
 820 accordance with the adopted goals and mission of the Department
 821 of Elderly Affairs and the ~~Statewide Public Guardianship~~ Office
 822 of Public and Professional Guardians.

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

827 (a) Certification by the ~~Statewide Public Guardianship~~
 828 Office of Public and Professional Guardians that the direct-
 829 support organization is complying with the terms of the contract
 830 and is doing so consistent with the goals and purposes of the
 831 office and in the best interests of the state. This
 832 certification must be made annually and reported in the official

833 minutes of a meeting of the direct-support organization.

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

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

839 2. To the ~~Statewide Public Guardianship~~ Office of Public
840 and Professional Guardians if the direct-support organization
841 ceases to exist;

842 3. To the Department of Elderly Affairs if the ~~Statewide~~
843 ~~Public Guardianship~~ Office of Public and Professional Guardians
844 ceases to exist; or

845 4. To the state if the Department of Elderly Affairs
846 ceases to exist.

847

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

850 (c) The disclosure of the material provisions of the
851 contract, and the distinction between the ~~Statewide Public~~
852 ~~Guardianship~~ Office of Public and Professional Guardians and the
853 direct-support organization, to donors of gifts, contributions,
854 or bequests, including such disclosure on all promotional and
855 fundraising publications.

856 (3) BOARD OF DIRECTORS.—The Secretary of Elderly Affairs
857 shall appoint a board of directors for the direct-support
858 organization from a list of nominees submitted by the executive

859 | director of the ~~Statewide Public Guardianship~~ Office of Public
 860 | and Professional Guardians.

861 | (4) USE OF PROPERTY.—The Department of Elderly Affairs may
 862 | permit, without charge, appropriate use of fixed property and
 863 | facilities of the department or the ~~Statewide Public~~
 864 | ~~Guardianship~~ Office of Public and Professional Guardians by the
 865 | direct-support organization. The department may prescribe any
 866 | condition with which the direct-support organization must comply
 867 | in order to use fixed property or facilities of the department
 868 | or the ~~Statewide Public Guardianship~~ Office of Public and
 869 | Professional Guardians.

870 | (5) MONEYS.—Any moneys may be held in a separate
 871 | depository account in the name of the direct-support
 872 | organization and subject to the provisions of the written
 873 | contract with the ~~Statewide Public Guardianship~~ Office of Public
 874 | and Professional Guardians. Expenditures of the direct-support
 875 | organization shall be expressly used to support the ~~Statewide~~
 876 | ~~Public Guardianship~~ Office of Public and Professional Guardians.
 877 | The expenditures of the direct-support organization may not be
 878 | used for the purpose of lobbying as defined in s. 11.045.

879 | (8) DISSOLUTION.—A ~~After July 1, 2004,~~ any not-for-profit
 880 | corporation incorporated under chapter 617 that is determined by
 881 | a circuit court to be representing itself as a direct-support
 882 | organization created under this section, but that does not have
 883 | a written contract with the ~~Statewide Public Guardianship~~ Office
 884 | of Public and Professional Guardians in compliance with this

885 section, is considered to meet the grounds for a judicial
 886 dissolution described in s. 617.1430(1)(a). The ~~Statewide Public~~
 887 ~~Guardianship~~ Office of Public and Professional Guardians shall
 888 be the recipient for all assets held by the dissolved
 889 corporation which accrued during the period that the dissolved
 890 corporation represented itself as a direct-support organization
 891 created under this section.

892 Section 23. Section 744.712, Florida Statutes, is
 893 renumbered as section 744.2106, Florida Statutes, and amended to
 894 read:

895 744.2106 ~~744.712~~ Joining Forces for Public Guardianship
 896 grant program; purpose.—The Legislature establishes the Joining
 897 Forces for Public Guardianship matching grant program for the
 898 purpose of assisting counties to establish and fund community-
 899 supported public guardianship programs. The Joining Forces for
 900 Public Guardianship matching grant program shall be established
 901 and administered by the ~~Statewide Public Guardianship~~ Office of
 902 Public and Professional Guardians within the Department of
 903 Elderly Affairs. The purpose of the program is to provide
 904 startup funding to encourage communities to develop and
 905 administer locally funded and supported public guardianship
 906 programs to address the needs of indigent and incapacitated
 907 residents.

908 (1) The ~~Statewide Public Guardianship~~ Office of Public and
 909 Professional Guardians may distribute the grant funds as
 910 follows:

911 (a) As initial startup funding to encourage counties that
912 have no office of public guardian to establish an office, or as
913 initial startup funding to open an additional office of public
914 guardian within a county whose public guardianship needs require
915 more than one office of public guardian.

916 (b) As support funding to operational offices of public
917 guardian that demonstrate a necessity for funds to meet the
918 public guardianship needs of a particular geographic area in the
919 state which the office serves.

920 (c) To assist counties that have an operating public
921 guardianship program but that propose to expand the geographic
922 area or population of persons they serve, or to develop and
923 administer innovative programs to increase access to public
924 guardianship in this state.

925

926 Notwithstanding this subsection, the executive director of the
927 office may award emergency grants if he or she determines that
928 the award is in the best interests of public guardianship in
929 this state. Before making an emergency grant, the executive
930 director must obtain the written approval of the Secretary of
931 Elderly Affairs. Subsections (2), (3), and (4) do not apply to
932 the distribution of emergency grant funds.

933 (2) One or more grants may be awarded within a county.
934 However, a county may not receive an award that equals, or
935 multiple awards that cumulatively equal, more than 20 percent of
936 the total amount of grant funds appropriated during any fiscal

937 | year.

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

942 | (a) In the second year that grant funds are awarded, the
 943 | cumulative sum of the award provided to one or more applicants
 944 | within the same county may not exceed 75 percent of the total
 945 | amount of grant funds awarded within that county in year one.

946 | (b) In the third year that grant funds are awarded, the
 947 | cumulative sum of the award provided to one or more applicants
 948 | within the same county may not exceed 60 percent of the total
 949 | amount of grant funds awarded within that county in year one.

950 | (c) In the fourth year that grant funds are awarded, the
 951 | cumulative sum of the award provided to one or more applicants
 952 | within the same county may not exceed 45 percent of the total
 953 | amount of grant funds awarded within that county in year one.

954 | (d) In the fifth year that grant funds are awarded, the
 955 | cumulative sum of the award provided to one or more applicants
 956 | within the same county may not exceed 30 percent of the total
 957 | amount of grant funds awarded within that county in year one.

958 | (e) In the sixth year that grant funds are awarded, the
 959 | cumulative sum of the award provided to one or more applicants
 960 | within the same county may not exceed 15 percent of the total
 961 | amount of grant funds awarded within that county in year one.

962 |

963 The ~~Statewide Public Guardianship~~ Office of Public and
 964 Professional Guardians may not award grant funds to any
 965 applicant within a county that has received grant funds for more
 966 than 6 years.

967 (4) Grant funds shall be used only to provide direct
 968 services to indigent wards, except that up to 10 percent of the
 969 grant funds may be retained by the awardee for administrative
 970 expenses.

971 (5) Implementation of the program is subject to a specific
 972 appropriation by the Legislature in the General Appropriations
 973 Act.

974 Section 24. Section 744.713, Florida Statutes, is
 975 renumbered as section 744.2107, Florida Statutes, and amended to
 976 read:

977 744.2107 ~~744.713~~ Program administration; duties of the
 978 ~~Statewide Public Guardianship~~ Office of Public and Professional
 979 Guardians.—The ~~Statewide Public Guardianship~~ Office of Public
 980 and Professional Guardians shall administer the grant program.

981 The office shall:

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

984 (2) Establish an application process for submitting a
 985 grant proposal.

986 (3) Request, receive, and review proposals from applicants
 987 seeking grant funds.

988 (4) Determine the amount of grant funds each awardee may

989 receive and award grant funds to applicants.

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

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

995 Section 25. Section 744.714, Florida Statutes, is
 996 renumbered as section 744.2108, Florida Statutes, and paragraph
 997 (b) of subsection (1) and paragraph (b) of subsection (2) of
 998 that section are amended, to read:

999 744.2108 ~~744.714~~ Eligibility.-

1000 (1) Any person or organization that has not been awarded a
 1001 grant must meet all of the following conditions to be eligible
 1002 to receive a grant:

1003 (b) The applicant must have already been appointed by, or
 1004 is pending appointment by, the ~~Statewide Public Guardianship~~
 1005 Office of Public and Professional Guardians to become an office
 1006 of public guardian in this state.

1007 (2) Any person or organization that has been awarded a
 1008 grant must meet all of the following conditions to be eligible
 1009 to receive another grant:

1010 (b) The applicant must have been appointed by, or is
 1011 pending reappointment by, the ~~Statewide Public Guardianship~~
 1012 Office of Public and Professional Guardians to be an office of
 1013 public guardian in this state.

1014 Section 26. Section 744.715, Florida Statutes, is

1015 | renumbered as section 744.2109, Florida Statutes, and amended to
 1016 | read:

1017 | 744.2109 ~~744.715~~ Grant application requirements; review
 1018 | criteria; awards process.—Grant applications must be submitted
 1019 | to the ~~Statewide Public Guardianship~~ Office of Public and
 1020 | Professional Guardians for review and approval.

1021 | (1) A grant application must contain:

1022 | (a) The specific amount of funds being requested.

1023 | (b) The proposed annual budget for the office of public
 1024 | guardian for which the applicant is applying on behalf of,
 1025 | including all sources of funding, and a detailed report of
 1026 | proposed expenditures, including administrative costs.

1027 | (c) The total number of wards the applicant intends to
 1028 | serve during the grant period.

1029 | (d) Evidence that the applicant has:

1030 | 1. Attempted to procure funds and has exhausted all
 1031 | possible other sources of funding; or

1032 | 2. Procured funds from local sources, but the total amount
 1033 | of the funds collected or pledged is not sufficient to meet the
 1034 | need for public guardianship in the geographic area that the
 1035 | applicant intends to serve.

1036 | (e) An agreement or confirmation from a local funding
 1037 | source, such as a county, municipality, or any other public or
 1038 | private organization, that the local funding source will
 1039 | contribute matching funds to the public guardianship program
 1040 | totaling not less than \$1 for every \$1 of grant funds awarded.

1041 For purposes of this section, an applicant may provide evidence
 1042 of agreements or confirmations from multiple local funding
 1043 sources showing that the local funding sources will pool their
 1044 contributed matching funds to the public guardianship program
 1045 for a combined total of not less than \$1 for every \$1 of grant
 1046 funds awarded. In-kind contributions, such as materials,
 1047 commodities, office space, or other types of facilities,
 1048 personnel services, or other items as determined by rule shall
 1049 be considered by the office and may be counted as part or all of
 1050 the local matching funds.

1051 (f) A detailed plan describing how the office of public
 1052 guardian for which the applicant is applying on behalf of will
 1053 be funded in future years.

1054 (g) Any other information determined by rule as necessary
 1055 to assist in evaluating grant applicants.

1056 (2) If the ~~Statewide Public Guardianship~~ Office of Public
 1057 and Professional Guardians determines that an applicant meets
 1058 the requirements for an award of grant funds, the office may
 1059 award the applicant any amount of grant funds the executive
 1060 director deems appropriate, if the amount awarded meets the
 1061 requirements of this act. The office may adopt a rule allocating
 1062 the maximum allowable amount of grant funds which may be
 1063 expended on any ward.

1064 (3) A grant awardee must submit a new grant application
 1065 for each year of additional funding.

1066 (4) (a) In the first year of the Joining Forces for Public

1067 Guardianship program's existence, the ~~Statewide Public~~
 1068 ~~Guardianship~~ Office of Public and Professional Guardians shall
 1069 give priority in awarding grant funds to those entities that:

1070 1. Are operating as appointed offices of public guardians
 1071 in this state;

1072 2. Meet all of the requirements for being awarded a grant
 1073 under this act; and

1074 3. Demonstrate a need for grant funds during the current
 1075 fiscal year due to a loss of local funding formerly raised
 1076 through court filing fees.

1077 (b) In each fiscal year after the first year that grant
 1078 funds are distributed, the ~~Statewide Public Guardianship~~ Office
 1079 of Public and Professional Guardians may give priority to
 1080 awarding grant funds to those entities that:

1081 1. Meet all of the requirements of this section and ss.
 1082 744.2106, 744.2107, and 744.2108 ~~this act~~ for being awarded
 1083 grant funds; and

1084 2. Submit with their application an agreement or
 1085 confirmation from a local funding source, such as a county,
 1086 municipality, or any other public or private organization, that
 1087 the local funding source will contribute matching funds totaling
 1088 an amount equal to or exceeding \$2 for every \$1 of grant funds
 1089 awarded by the office. An entity may submit with its application
 1090 agreements or confirmations from multiple local funding sources
 1091 showing that the local funding sources will pool their
 1092 contributed matching funds to the public guardianship program

1093 for a combined total of not less than \$2 for every \$1 of grant
1094 funds awarded. In-kind contributions allowable under this
1095 section shall be evaluated by the ~~Statewide Public Guardianship~~
1096 Office of Public and Professional Guardians and may be counted
1097 as part or all of the local matching funds.

1098 Section 27. Subsection (3), paragraph (c) of subsection
1099 (4), and subsections (5) and (6) of section 744.3135, Florida
1100 Statutes, are amended to read:

1101 744.3135 Credit and criminal investigation.-

1102 (3) For professional guardians, the court and the
1103 ~~Statewide Public Guardianship~~ Office of Public and Professional
1104 Guardians shall accept the satisfactory completion of a criminal
1105 history record check by any method described in this subsection.
1106 A professional guardian satisfies the requirements of this
1107 section by undergoing an electronic fingerprint criminal history
1108 record check. A professional guardian may use any electronic
1109 fingerprinting equipment used for criminal history record
1110 checks. By October 1, 2016, the ~~Statewide Public Guardianship~~
1111 Office of Public and Professional Guardians shall adopt a rule
1112 detailing the acceptable methods for completing an electronic
1113 fingerprint criminal history record check under this section.
1114 The professional guardian shall pay the actual costs incurred by
1115 the Federal Bureau of Investigation and the Department of Law
1116 Enforcement for the criminal history record check. The entity
1117 completing the record check must immediately send the results of
1118 the criminal history record check to the clerk of the court and

1119 the ~~Statewide Public Guardianship~~ Office of Public and
 1120 Professional Guardians. The clerk of the court shall maintain
 1121 the results in the professional guardian's file and shall make
 1122 the results available to the court.

1123 (4)

1124 (c) The Department of Law Enforcement shall search all
 1125 arrest fingerprints received under s. 943.051 against the
 1126 fingerprints retained in the statewide automated biometric
 1127 identification system under paragraph (b). Any arrest record
 1128 that is identified with the fingerprints of a person described
 1129 in this paragraph must be reported to the clerk of court. The
 1130 clerk of court must forward any arrest record received for a
 1131 professional guardian to the ~~Statewide Public Guardianship~~
 1132 Office of Public and Professional Guardians within 5 days. Each
 1133 professional guardian who elects to submit fingerprint
 1134 information electronically shall participate in this search
 1135 process by paying an annual fee to the ~~Statewide Public~~
 1136 ~~Guardianship~~ Office of Public and Professional Guardians of the
 1137 Department of Elderly Affairs and by informing the clerk of
 1138 court and the ~~Statewide Public Guardianship~~ Office of Public and
 1139 Professional Guardians of any change in the status of his or her
 1140 guardianship appointment. The amount of the annual fee to be
 1141 imposed for performing these searches and the procedures for the
 1142 retention of professional guardian fingerprints and the
 1143 dissemination of search results shall be established by rule of
 1144 the Department of Law Enforcement. At least once every 5 years,

1145 the ~~Statewide Public Guardianship~~ Office of Public and
 1146 Professional Guardians must request that the Department of Law
 1147 Enforcement forward the fingerprints maintained under this
 1148 section to the Federal Bureau of Investigation.

1149 (5) (a) A professional guardian, and each employee of a
 1150 professional guardian who has a fiduciary responsibility to a
 1151 ward, must complete, at his or her own expense, an investigation
 1152 of his or her credit history before and at least once every 2
 1153 years after the date of the guardian's registration with the
 1154 ~~Statewide Public Guardianship~~ Office of Public and Professional
 1155 Guardians.

1156 (b) By October 1, 2016, the ~~Statewide Public Guardianship~~
 1157 Office of Public and Professional Guardians shall adopt a rule
 1158 detailing the acceptable methods for completing a credit
 1159 investigation under this section. If appropriate, the ~~Statewide~~
 1160 ~~Public Guardianship~~ Office of Public and Professional Guardians
 1161 may administer credit investigations. If the office chooses to
 1162 administer the credit investigation, the office may adopt a rule
 1163 setting a fee, not to exceed \$25, to reimburse the costs
 1164 associated with the administration of a credit investigation.

1165 (6) The ~~Statewide Public Guardianship~~ Office of Public and
 1166 Professional Guardians may inspect at any time the results of
 1167 any credit or criminal history record check of a public or
 1168 professional guardian conducted under this section. The office
 1169 shall maintain copies of the credit or criminal history record
 1170 check results in the guardian's registration file. If the

1171 results of a credit or criminal investigation of a public or
 1172 professional guardian have not been forwarded to the ~~Statewide~~
 1173 ~~Public Guardianship~~ Office of Public and Professional Guardians
 1174 by the investigating agency, the clerk of the court shall
 1175 forward copies of the results of the investigations to the
 1176 office upon receiving them.

1177 Section 28. Section 744.701, Florida Statutes, is
 1178 repealed.

1179 Section 29. Section 744.702, Florida Statutes, is
 1180 repealed.

1181 Section 30. Section 744.7101, Florida Statutes, is
 1182 repealed.

1183 Section 31. Section 744.711, Florida Statutes, is
 1184 repealed.

1185 Section 32. Subsection (5) of section 400.148, Florida
 1186 Statutes, is amended to read:

1187 400.148 Medicaid "Up-or-Out" Quality of Care Contract
 1188 Management Program.—

1189 (5) The agency shall, jointly with the ~~Statewide Public~~
 1190 ~~Guardianship~~ Office of Public and Professional Guardians,
 1191 develop a system in the pilot project areas to identify Medicaid
 1192 recipients who are residents of a participating nursing home or
 1193 assisted living facility who have diminished ability to make
 1194 their own decisions and who do not have relatives or family
 1195 available to act as guardians in nursing homes listed on the
 1196 Nursing Home Guide Watch List. The agency and the ~~Statewide~~

1197 ~~Public Guardianship~~ Office of Public and Professional Guardians
 1198 shall give such residents priority for publicly funded
 1199 guardianship services.

1200 Section 33. Paragraph (d) of subsection (3) of section
 1201 744.331, Florida Statutes, is amended to read:

1202 744.331 Procedures to determine incapacity.-

1203 (3) EXAMINING COMMITTEE.-

1204 (d) A member of an examining committee must complete a
 1205 minimum of 4 hours of initial training. The person must complete
 1206 2 hours of continuing education during each 2-year period after
 1207 the initial training. The initial training and continuing
 1208 education program must be developed under the supervision of the
 1209 ~~Statewide Public Guardianship~~ Office of Public and Professional
 1210 Guardians, in consultation with the Florida Conference of
 1211 Circuit Court Judges; the Elder Law and the Real Property,
 1212 Probate and Trust Law sections of The Florida Bar; and the
 1213 Florida State Guardianship Association; ~~and the Florida~~
 1214 ~~Guardianship Foundation~~. The court may waive the initial
 1215 training requirement for a person who has served for not less
 1216 than 5 years on examining committees. If a person wishes to
 1217 obtain his or her continuing education on the Internet or by
 1218 watching a video course, the person must first obtain the
 1219 approval of the chief judge before taking an Internet or video
 1220 course.

1221 Section 34. Paragraph (a) of subsection (1) of section
 1222 20.415, Florida Statutes, is amended to read:

1223 20.415 Department of Elderly Affairs; trust funds.—The
 1224 following trust funds shall be administered by the Department of
 1225 Elderly Affairs:

1226 (1) Administrative Trust Fund.

1227 (a) Funds to be credited to and uses of the trust fund
 1228 shall be administered in accordance with ss. 215.32, 744.534,
 1229 and 744.2001 ~~744.7021~~.

1230 Section 35. Paragraph (e) of subsection (2) of section
 1231 415.1102, Florida Statutes, is amended to read:

1232 415.1102 Adult protection teams.—

1233 (2) Such teams may be composed of, but need not be limited
 1234 to:

1235 (e) Public and professional guardians as described in part
 1236 II ~~IX~~ of chapter 744.

1237 Section 36. Paragraph (a) of subsection (7) of section
 1238 744.309, Florida Statutes, is amended to read:

1239 744.309 Who may be appointed guardian of a resident ward.—

1240 (7) FOR-PROFIT CORPORATE GUARDIAN.—A for-profit corporate
 1241 guardian existing under the laws of this state is qualified to
 1242 act as guardian of a ward if the entity is qualified to do
 1243 business in the state, is wholly owned by the person who is the
 1244 circuit's public guardian in the circuit where the corporate
 1245 guardian is appointed, has met the registration requirements of
 1246 s. 744.2002 ~~s. 744.1083~~, and posts and maintains a bond or
 1247 insurance policy under paragraph (a).

1248 (a) The for-profit corporate guardian must meet one of the

1249 following requirements:

1250 1. Post and maintain a blanket fiduciary bond of at least
 1251 \$250,000 with the clerk of the circuit court in the county in
 1252 which the corporate guardian has its principal place of
 1253 business. The corporate guardian shall provide proof of the
 1254 fiduciary bond to the clerks of each additional circuit court in
 1255 which he or she is serving as a guardian. The bond must cover
 1256 all wards for whom the corporation has been appointed as a
 1257 guardian at any given time. The liability of the provider of the
 1258 bond is limited to the face value of the bond, regardless of the
 1259 number of wards for whom the corporation is acting as a
 1260 guardian. The terms of the bond must cover the acts or omissions
 1261 of each agent or employee of the corporation who has direct
 1262 contact with the ward or access to the assets of the
 1263 guardianship. The bond must be payable to the Governor and his
 1264 or her successors in office and be conditioned on the faithful
 1265 performance of all duties of a guardian under this chapter. The
 1266 bond is in lieu of and not in addition to the bond required
 1267 under s. 744.2003 ~~s. 744.1085~~ but is in addition to any bonds
 1268 required under s. 744.351. The expenses incurred to satisfy the
 1269 bonding requirements of this section may not be paid with the
 1270 assets of any ward; or

1271 2. Maintain a liability insurance policy that covers any
 1272 losses sustained by the guardianship caused by errors,
 1273 omissions, or any intentional misconduct committed by the
 1274 corporation's officers or agents. The policy must cover all

1275 wards for whom the corporation is acting as a guardian for
 1276 losses up to \$250,000. The terms of the policy must cover acts
 1277 or omissions of each agent or employee of the corporation who
 1278 has direct contact with the ward or access to the assets of the
 1279 guardianship. The corporate guardian shall provide proof of the
 1280 policy to the clerk of each circuit court in which he or she is
 1281 serving as a guardian.

1282 Section 37. Section 744.524, Florida Statutes, is amended
 1283 to read:

1284 744.524 Termination of guardianship on change of domicile
 1285 of resident ward.—When the domicile of a resident ward has
 1286 changed as provided in s. 744.1098 ~~s. 744.2025~~, and the foreign
 1287 court having jurisdiction over the ward at the ward's new
 1288 domicile has appointed a guardian and that guardian has
 1289 qualified and posted a bond in an amount required by the foreign
 1290 court, the guardian in this state may file her or his final
 1291 report and close the guardianship in this state. The guardian of
 1292 the property in this state shall cause a notice to be published
 1293 once a week for 2 consecutive weeks, in a newspaper of general
 1294 circulation published in the county, that she or he has filed
 1295 her or his accounting and will apply for discharge on a day
 1296 certain and that jurisdiction of the ward will be transferred to
 1297 the state of foreign jurisdiction. If an objection is filed to
 1298 the termination of the guardianship in this state, the court
 1299 shall hear the objection and enter an order either sustaining or
 1300 overruling the objection. Upon the disposition of all objections

1301 filed, or if no objection is filed, final settlement shall be
1302 made by the Florida guardian. On proof that the remaining
1303 property in the guardianship has been received by the foreign
1304 guardian, the guardian of the property in this state shall be
1305 discharged. The entry of the order terminating the guardianship
1306 in this state shall not exonerate the guardian or the guardian's
1307 surety from any liability previously incurred.

1308 Section 38. This act shall take effect upon becoming a
1309 law.

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 | _____ | |

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Ahern offered the following:

Amendment (with title amendment)

Between lines 1307 and 1308, insert:

Section 38. For the 2016-2017 fiscal year, six full-time equivalent positions, with associated salary rate of 242,345, are authorized and the sums of \$698,153 in recurring funds and \$123,517 in nonrecurring funds from the General Revenue Fund are hereby appropriated to the Department of Elder Affairs for the purpose of implementing the requirements of the act.

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

Remove line 89 and insert:

Amendment No. 1

18 | cross-references; making technical changes; providing an
19 | appropriation; providing