

CHAPTER 2023-259

Senate Bill No. 1396

An act relating to the Department of Elderly Affairs; amending s. 400.0069, F.S.; revising the list of individuals who may not be appointed as ombudsmen under the State Long-Term Care Ombudsman Program; amending s. 430.0402, F.S.; revising the definition of the term “direct service provider”; deleting an exemption from level 2 background screening requirements for certain individuals; deleting obsolete language; amending s. 744.2001, F.S.; deleting obsolete language; providing additional duties for the executive director of the Office of Public and Professional Guardians; amending s. 744.2003, F.S.; revising continuing education requirements for professional guardians; amending s. 744.2004, F.S.; requiring the office to notify complainants within a specified timeframe after determining that a complaint against a professional guardian is not legally sufficient; reducing the timeframe within which the office must complete and provide its initial investigative findings and recommendations, if any, to the professional guardian who is the subject of the investigation and to the complainant; requiring the office to provide a certain written statement to the complainant and the professional guardian within a specified timeframe after completing an investigation; deleting obsolete language; amending s. 744.3145, F.S.; providing an additional method of complying with certain instruction and education requirements for court-appointed guardians; amending s. 744.368, F.S.; requiring clerks of the court to report to the office within a specified timeframe after the court imposes any sanctions on a professional guardian; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 400.0069, Florida Statutes, is amended to read:

400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils; duties; appointment.—

(4) Each district and local council shall be composed of ombudsmen whose primary residences are located within the boundaries of the district.

(b) The following individuals may not be appointed as ombudsmen:

1. The owner or representative of a long-term care facility.
2. A provider or representative of a provider of long-term care service.
3. An employee of the agency.

4. An employee of the department who is not employed in the State Long-Term Care Ombudsman Program, except for staff certified as ombudsmen in the district offices.

5. An employee of the Department of Children and Families.

6. An employee of the Agency for Persons with Disabilities.

Section 2. Paragraph (b) of subsection (1), paragraphs (a) and (c) of subsection (2), and subsection (3) of section 430.0402, Florida Statutes, are amended to read:

430.0402 Screening of direct service providers.—

(1)

(b) For purposes of this section, the term “direct service provider” means a person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client and has access to the client’s living areas, funds, personal property, or personal identification information as defined in s. 817.568. The term also includes, but is not limited to, the administrator or a similarly titled person who is responsible for the day-to-day operations of the provider, the financial officer or similarly titled person who is responsible for the financial operations of the provider, coordinators, managers, and supervisors of residential facilities, and volunteers, and any other person seeking employment with a provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, financial matters, legal matters, personal property, or living areas.

(2) Level 2 background screening pursuant to chapter 435 and this section is not required for the following direct service providers:

~~(a)1. Licensed physicians, nurses, or other professionals licensed by the Department of Health who have been fingerprinted and undergone background screening as part of their licensure; and~~

~~2.—Attorneys in good standing with The Florida Bar;~~

if they are providing a service that is within the scope of their licensed practice.

(c) Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.

1. The program that provides services to the elderly is responsible for verifying that the volunteer is not listed on either database.

~~2. Once the department is participating as a specified agency in the clearinghouse created under s. 435.12, The provider shall forward the volunteer information to the Department of Elderly Affairs if the volunteer is not listed in either database specified in subparagraph 1. The department must then perform a check of the clearinghouse. If a disqualification is identified in the clearinghouse, the volunteer must undergo level 2 background screening pursuant to chapter 435 and this section.~~

~~(3) Until the department is participating as a specified agency in the clearinghouse created under s. 435.12, the department may not require additional level 2 screening if the individual is qualified for licensure or employment by the Agency for Health Care Administration pursuant to the agency’s background screening standards under s. 408.809 and the individual is providing a service that is within the scope of his or her licensed practice or employment.~~

Section 3. Subsections (2) and (3) of section 744.2001, Florida Statutes, are amended to read:

744.2001 Office of Public and Professional Guardians.—There is created the Office of Public and Professional Guardians within the Department of Elderly Affairs.

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

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

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

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

(d) Offer and make available online an education course to satisfy the requirements of s. 744.3145(2).

(e) Produce and make available information about alternatives to and types of guardianship for dissemination by area agencies on aging as defined in s. 430.203 and aging resource centers as described in s. 430.2053.

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

(a) Developing and implementing a monitoring tool to ensure compliance of professional guardians with the standards of practice established by the

Office of Public and Professional Guardians. This monitoring tool may not include a financial audit as required by the clerk of the circuit court under s. 744.368.

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

(c) Establishing disciplinary proceedings, conducting hearings, and taking administrative action pursuant to chapter 120.

Section 4. Subsection (3) of section 744.2003, Florida Statutes, is amended to read:

744.2003 Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian as defined in s. 744.102(17) and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 30 ~~16~~ hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The required continuing education must include at least 2 hours on fiduciary responsibilities; 2 hours on professional ethics; 1 hour on advance directives; 3 hours on abuse, neglect, and exploitation; and 4 hours on guardianship law. The instruction and education must be completed through a course approved or offered by the Office of Public and Professional Guardians. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney ~~who is~~ licensed to practice law in this state or an institution acting as guardian under s. 744.2002(7).

Section 5. Subsections (1) and (6) of section 744.2004, Florida Statutes, are amended to read:

744.2004 Complaints; disciplinary proceedings; penalties; enforcement.

(1) ~~By October 1, 2016,~~ The Office of Public and Professional Guardians shall establish procedures to:

(a) Review and, if determined legally sufficient, initiate an investigation within 10 business days after receipt of ~~investigate~~ any complaint that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians. A complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

(b) ~~Notify the complainant~~ ~~Initiate an investigation~~ no later than 10 business days after the Office of Public and Professional Guardians determines that a complaint is not legally sufficient ~~receives a complaint.~~

(c) Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and the person who filed the complaint within ~~45~~ 60 days after receipt of a complaint.

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

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

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

(g) Within 10 business days after completing an investigation, provide to the complainant and the professional guardian a written statement specifying any finding of a violation of a standard of practice by the professional guardian and any actions taken, or specifying that no such violation was found, as applicable.

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

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

Section 6. Subsection (4) of section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.—

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within 4 months after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization or through a course offered by the Office of Public and Professional Guardians under s. 744.2001. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

Section 7. Subsection (8) is added to section 744.368, Florida Statutes, to read:

744.368 Responsibilities of the clerk of the circuit court.—

(8) Within 10 business days after the court imposes any sanctions on a professional guardian, including, but not limited to, contempt of court or removal of the professional guardian, the clerk shall report such actions to the Office of Public and Professional Guardians.

Section 8. This act shall take effect July 1, 2023.

Approved by the Governor June 19, 2023.

Filed in Office Secretary of State June 19, 2023.