

1 A bill to be entitled
2 An act relating to an elder-focused dispute resolution
3 process; creating s. 44.407, F.S.; providing
4 legislative findings; defining terms; authorizing the
5 courts to appoint an eldercaring coordinator and refer
6 certain parties and elders to eldercaring
7 coordination; prohibiting the courts from referring
8 certain parties to eldercaring coordination without
9 the consent of the elder and other parties to the
10 action; specifying the duration of eldercaring
11 coordinator appointments; requiring the courts to
12 conduct intermittent review hearings regarding the
13 conclusion or extension of such appointments;
14 specifying mechanisms by which a court appointment is
15 terminated or extended; providing qualifications and
16 disqualifications for eldercaring coordinators;
17 requiring prospective eldercaring coordinators to meet
18 certain qualifications for background screening,
19 unless otherwise exempt; requiring prospective
20 eldercaring coordinators to submit fingerprints for
21 purposes of criminal history background screening;
22 requiring prospective eldercaring coordinators to pay
23 the fees for state and federal fingerprint processing;
24 providing for the disqualification and removal of
25 certain eldercaring coordinators; requiring that

26 | notice of hearing on removal of an eldercaring
27 | coordinator be timely served; authorizing the courts
28 | to award reasonable attorney fees and costs under
29 | certain circumstances; requiring the court to appoint
30 | successor eldercaring coordinators under certain
31 | circumstances; specifying the courts' authority to
32 | make certain determinations based on the parties'
33 | ability to pay the eldercaring coordination fees and
34 | costs; providing that certain communications between
35 | the parties, participants, and eldercaring
36 | coordinators are confidential; providing exceptions;
37 | providing requirements for emergency reporting to
38 | courts under certain circumstances; providing immunity
39 | from liability for eldercaring coordinators under
40 | specified circumstances; requiring the Florida Supreme
41 | Court to establish certain minimum standards and
42 | procedures for eldercaring coordinators; authorizing a
43 | court to address procedures governing complaints
44 | against appointed eldercaring coordinators under
45 | certain circumstances; authorizing the Florida Supreme
46 | Court to appoint or employ personnel for specified
47 | purposes; providing an effective date.

48 |
49 | Be It Enacted by the Legislature of the State of Florida:
50 |

51 Section 1. Section 44.407, Florida Statutes, is created to
52 read:

53 44.407 Elder-focused dispute resolution process.—

54 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

55 (a) Denying an elder a voice in decisions regarding
56 himself or herself may negatively affect the elder's health and
57 well-being, as well as deprive the elder of his or her legal
58 rights. Even if an elder is losing capacity to make major
59 decisions for himself or herself, the elder is still entitled to
60 the dignity of having his or her voice heard.

61 (b) In conjunction with proceedings in court, it is in the
62 best interest of an elder, his or her family members, and
63 legally recognized decisionmakers to have access to a
64 nonadversarial process to resolve disputes relating to the elder
65 which focuses on the elder's wants, needs, and best interests.
66 Such a process will protect and preserve the elder's exercisable
67 rights.

68 (c) By recognizing that every elder, including those whose
69 capacity is being questioned, has unique needs, interests, and
70 differing abilities, the Legislature intends for this section to
71 promote the public welfare by establishing a unique dispute
72 resolution option to complement and enhance, not replace, other
73 services, such as the provision of legal information or legal
74 representation; financial advice; individual or family therapy;
75 medical, psychological, or psychiatric evaluation; or mediation,

76 specifically for issues related to the care and needs of elders.
77 The Legislature intends that this section be liberally construed
78 to accomplish these goals.

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

80 (a) "Action," for purposes of using eldercaring
81 coordination solely to address disputes regarding the care and
82 safety of the elder, means a proceeding in which a party sought
83 or seeks a judgment or order from the court to:

84 1. Determine if someone is or is not incapacitated
85 pursuant to s. 744.331.

86 2. Appoint or remove a guardian or guardian advocate.

87 3. Review any actions of a guardian.

88 4. Execute an investigation pursuant to s. 415.104.

89 5. Review an agent's actions pursuant to s. 709.2116.

90 6. Review a proxy's decision pursuant to s. 765.105.

91 7. Enter an injunction for the protection of an elder
92 under s. 825.1035.

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

95 9. At the discretion of the presiding judge, address any
96 other matters pending before the court which involve the care
97 and safety of an elder.

98
99 The term does not include any action brought under chapters 732,
100 733, and 736.

101 (b) "Care and safety" means the condition of the elder's
102 general physical, mental, emotional, psychological, and social
103 well-being. The term does not include a determination of
104 capacity by the court under s. 744.331(5) and (6). Unless the
105 parties agree otherwise, the term does not include matters
106 relating to the elder's estate planning, the elder's agent
107 designations under chapter 709, the elder's surrogate
108 designations under chapter 765, trusts in which the elder is a
109 grantor, fiduciary, or beneficiary, or other similar financially
110 focused matters.

111 (c) "Elder" means a person 60 years of age or older who is
112 alleged to be suffering from the infirmities of aging as
113 manifested by a physical, a mental, or an emotional dysfunction
114 to the extent that the elder's ability to provide adequately for
115 the protection or care of his or her own person or property is
116 impaired.

117 (d) "Eldercaring coordination" means an elder-focused
118 dispute resolution process during which an eldercaring
119 coordinator assists an elder, legally authorized decisionmakers,
120 and others who participate by court order or by invitation of
121 the eldercaring coordinator in resolving disputes regarding the
122 care and safety of an elder by:

- 123 1. Facilitating more effective communication and
124 negotiation and the development of problem-solving skills.
125 2. Providing education about eldercare resources.

126 3. Facilitating the creation, modification, or
127 implementation of an eldercaring plan and reassessing it as
128 necessary to reach a resolution of ongoing disputes concerning
129 the care and safety of the elder.

130 4. Making recommendations for the resolution of disputes
131 concerning the care and safety of the elder.

132 5. With the prior approval of the parties to an action or
133 of the court, making limited decisions within the scope of the
134 court's order of referral.

135 (e) "Eldercaring coordination communication" means an oral
136 or written statement, or nonverbal conduct intended to make an
137 assertion, by, between, or among the parties, participants, or
138 eldercaring coordinator made during the course of eldercaring
139 coordination activity, or before an eldercaring coordination
140 activity if made in furtherance of eldercaring coordination. The
141 term does not include statements made during eldercaring
142 coordination which involve the commission of a crime, the intent
143 to commit a crime, or ongoing abuse, exploitation, or neglect of
144 a child or vulnerable adult.

145 (f) "Eldercaring coordinator" means an impartial third
146 person who is appointed by the court or designated by the
147 parties and who meets the requirements of subsection (5). The
148 role of the eldercaring coordinator is to assist parties through
149 eldercaring coordination in a manner that respects the elder's
150 need for autonomy and safety.

151 (g) "Eldercaring plan" means a continually reassessed plan
152 for the items, tasks, or responsibilities needed to provide for
153 the care and safety of an elder which is modified throughout
154 eldercaring coordination to meet the changing needs of the elder
155 and which takes into consideration the preferences and wishes of
156 the elder. The plan is not a legally enforceable document, but
157 is meant for use by the parties and participants.

158 (h) "Good cause" means a finding that the eldercaring
159 coordinator:

160 1. Is not fulfilling the duties and obligations of the
161 position;

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

164 3. Has conflicting or adverse interests that affect his or
165 her impartiality;

166 4. Has engaged in circumstances that compromise the
167 integrity of eldercaring coordination; or

168 5. Has had a disqualifying event occur.

169

170 The term does not include a party's disagreement with the
171 eldercaring coordinator's methods or procedures.

172 (i) "Legally authorized decisionmaker" means an individual
173 designated, either by the elder or by the court, pursuant to
174 chapter 709, chapter 744, chapter 747, or chapter 765 who has
175 the authority to make specific decisions on behalf of the elder

176 who is the subject of an action.

177 (j) "Participant" means an individual who is not a party
178 who joins eldercaring coordination by invitation of or with the
179 consent of the eldercaring coordinator but who has not filed a
180 pleading in the action from which the case was referred to
181 eldercaring coordination.

182 (k) "Party" includes the elder who is the subject of an
183 action and any other individual over whom the court has
184 jurisdiction in the current case.

185 (3) REFERRAL.—

186 (a) Upon agreement of the parties to the action, the
187 court's own motion, or the motion of a party to the action, the
188 court may appoint an eldercaring coordinator and refer the
189 parties to eldercaring coordination to assist in the resolution
190 of disputes concerning the care and safety of the elder who is
191 the subject of an action.

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

196 1. The court shall offer each party an opportunity to
197 consult with an attorney or a domestic violence advocate before
198 accepting consent to such referral. The court shall determine
199 whether each party has given his or her consent freely and
200 voluntarily.

201 2. The court shall consider whether a party has committed
 202 an act of exploitation as defined in s. 415.102, exploitation of
 203 an elderly person or disabled adult as defined in s. 825.103(1),
 204 or domestic violence as defined in s. 741.28 against another
 205 party or any member of another party's family; engaged in a
 206 pattern of behaviors that exert power and control over another
 207 party and that may compromise another party's ability to
 208 negotiate a fair result; or engaged in behavior that leads
 209 another party to have reasonable cause to believe that he or she
 210 is in imminent danger of becoming a victim of domestic violence.
 211 The court shall consider and evaluate all relevant factors,
 212 including, but not limited to, the factors specified in s.
 213 741.30(6)(b).

214 3. If a party has a history of domestic violence or
 215 exploitation of an elderly person, the court must order
 216 safeguards to protect the safety of the participants and the
 217 elder and the elder's property, including, but not limited to,
 218 adherence to all provisions of an injunction for protection or
 219 conditions of bail, probation, or a sentence arising from
 220 criminal proceedings.

221 (4) COURT APPOINTMENT.—

222 (a) A court appointment of an eldercaring coordinator is
 223 for a term of up to 2 years and the court shall conduct review
 224 hearings intermittently to determine whether the term should be
 225 concluded or extended. Appointments conclude upon expiration of

226 the term or upon discharge by the court, whichever occurs
 227 earlier.

228 (b) The order of appointment by the court shall define the
 229 scope of the eldercaring coordinator's authority under the
 230 appointment in the action, consistent with this section.

231 (c) The order shall specify that, notwithstanding the
 232 intermittent review hearings under paragraph (a), a party may
 233 move the court at any time during the period of appointment for
 234 termination of the appointment. Upon the filing of such a
 235 motion, the court shall timely conduct a hearing to determine
 236 whether to terminate the appointment. Until the court has ruled
 237 on the motion, the eldercaring coordination process shall
 238 continue. In making the determination, the court shall consider
 239 at a minimum:

240 1. The efforts and progress of eldercaring coordination in
 241 the action to date;

242 2. The preference of the elder, if ascertainable; and

243 3. Whether continuation of the appointment is in the best
 244 interest of the elder.

245 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

246 (a) The court shall appoint qualified eldercaring
 247 coordinators who:

248 1. Meet one of the following professional requirements:

249 a. Are licensed as a mental health professional under
 250 chapter 491 and hold at least a master's degree in the

251 professional field of practice;
252 b. Are licensed as a psychologist under chapter 490;
253 c. Are licensed as a physician under chapter 458 or
254 chapter 459;
255 d. Are licensed as a nurse under chapter 464 and hold at
256 least a master's degree;
257 e. Are certified by the Florida Supreme Court as a family
258 mediator and hold at least a master's degree;
259 f. Are a member in good standing of The Florida Bar; or
260 g. Are a professional guardian as defined in s.
261 744.102(17) and hold at least a master's degree.
262 2. Have completed all of the following:
263 a. Three years of post-licensure or post-certification
264 practice;
265 b. A family mediation training program certified by the
266 Florida Supreme Court; and
267 c. An eldercaring coordinator training program certified
268 by the Florida Supreme Court. The training must total at least
269 44 hours and must include advanced tactics for dispute
270 resolution of issues related to aging, illness, incapacity, or
271 other vulnerabilities associated with elders, as well as elder,
272 guardianship, and incapacity law and procedures and less
273 restrictive alternatives to guardianship; phases of eldercaring
274 coordination and the role and functions of an eldercaring
275 coordinator; the elder's role within eldercaring coordination;

276 family dynamics related to eldercaring coordination; eldercaring
277 coordination skills and techniques; multicultural competence and
278 its use in eldercaring coordination; at least 6 hours of the
279 implications of elder abuse, neglect, and exploitation and other
280 safety issues pertinent to the training; at least 4 hours of
281 ethical considerations pertaining to the training; use of
282 technology within eldercaring coordination; and court-specific
283 eldercaring coordination procedures. Pending certification of a
284 training program by the Florida Supreme Court, the eldercaring
285 coordinator must document completion of training that satisfies
286 the hours and the elements prescribed in this sub-subparagraph.

287 3. Have successfully passed a Level 2 background screening
288 as provided in s. 435.04(2) and (3) or are exempt from
289 disqualification under s. 435.07. The prospective eldercaring
290 coordinator must submit a full set of fingerprints to the court
291 or to a vendor, entity, or agency authorized by s. 943.053(13).
292 The court, vendor, entity, or agency shall forward the
293 fingerprints to the Department of Law Enforcement for state
294 processing and the Department of Law Enforcement shall forward
295 the fingerprints to the Federal Bureau of Investigation for
296 national processing. The prospective eldercaring coordinator
297 shall pay the fees for state and federal fingerprint processing.
298 The state cost for fingerprint processing shall be as provided
299 in s. 943.053(3)(e) for records provided to persons or entities
300 other than those specified as exceptions therein.

301 4. Have not been a respondent in a final order granting an
302 injunction for protection against domestic, dating, sexual, or
303 repeat violence or stalking or exploitation of an elder or a
304 disabled person.

305 5. Have met any additional qualifications the court may
306 require to address issues specific to the parties.

307 (b) A qualified eldercaring coordinator must be in good
308 standing or in clear and active status with all professional
309 licensing authorities or certification boards to which the
310 eldercaring coordinator is subject.

311 (6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING
312 COORDINATORS.—

313 (a) An eldercaring coordinator must resign and immediately
314 report to the court if he or she no longer meets the minimum
315 qualifications or if any of the disqualifying circumstances
316 occurs.

317 (b) The court shall remove an eldercaring coordinator upon
318 the eldercaring coordinator's resignation or disqualification or
319 upon a finding of good cause shown based on the court's own
320 motion or a party's motion.

321 (c) Upon the court's own motion or upon a party's motion,
322 the court may suspend the authority of an eldercaring
323 coordinator pending a hearing on the motion for removal. Notice
324 of hearing on removal must be timely served on the eldercaring
325 coordinator and all parties.

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

330 (7) SUCCESSOR ELDERCARING COORDINATORS.—If an eldercaring
 331 coordinator resigns, is removed, or is suspended from an
 332 appointment, the court shall appoint a successor qualified
 333 eldercaring coordinator who is agreed to by all parties or, if
 334 the parties do not reach agreement on a successor, another
 335 qualified eldercaring coordinator to serve for the remainder of
 336 the original term.

337 (8) FEES AND COSTS.—The eldercaring coordinator's fees
 338 shall be paid in equal portions by each party referred to the
 339 eldercaring coordination process by the court. The order of
 340 referral shall specify which parties are ordered to the process
 341 and the percentage of the eldercaring coordinator's fees that
 342 each shall pay. The court may determine the allocation among the
 343 parties of fees and costs for eldercaring coordination and may
 344 make an unequal allocation based on the financial circumstances
 345 of each party, including the elder.

346 (a) A party who is asserting that he or she is unable to
 347 pay the eldercaring coordination fees and costs must complete a
 348 financial affidavit form approved by the presiding court. The
 349 court shall consider the party's financial circumstances,
 350 including income; assets; liabilities; financial obligations;

351 and resources, including, but not limited to, whether the party
352 can receive or is receiving trust benefits, whether the party is
353 represented by and paying a lawyer, and whether paying the fees
354 and costs of eldercaring coordination would create a substantial
355 hardship.

356 (b) If a court finds that a party is indigent based upon
357 the criteria prescribed in s. 57.082, the court may not order
358 the party to eldercaring coordination unless funds are available
359 to pay the indigent party's allocated portion of the eldercaring
360 coordination fees and costs, which may include funds provided
361 for that purpose by one or more nonindigent parties who consent
362 to paying such fees and costs, or unless insurance coverage or
363 reduced or pro bono services are available to pay all or a
364 portion of such fees and costs. If financial assistance, such as
365 health insurance or eldercaring coordination grants, is
366 available, such assistance must be taken into consideration by
367 the court in determining the financial abilities of the parties.

368 (9) CONFIDENTIALITY; PRIVILEGE; EXCEPTIONS.-

369 (a) Except as provided in this subsection, all eldercaring
370 coordination communications are confidential. An eldercaring
371 coordination party, participant, or eldercaring coordinator may
372 not disclose an eldercaring coordination communication to a
373 person other than another eldercaring coordination party,
374 participant, or eldercaring coordinator, or a party's or
375 participant's counsel. A violation of this subsection may be

376 remedied as provided in paragraph (g). If the eldercaring
377 coordination is court ordered, a violation of this subsection
378 may also subject the eldercaring coordination participant to
379 sanctions by the court, including, but not limited to, costs,
380 attorney fees and costs, and eldercaring coordinator's fees and
381 costs.

382 (b) An eldercaring coordination party, participant, or
383 eldercaring coordinator has a privilege to refuse to testify and
384 to prevent any other person from testifying in a subsequent
385 proceeding regarding eldercaring coordination communications.

386 (c) Notwithstanding paragraphs (a) and (b), there is no
387 confidentiality or privilege attached to any signed written
388 agreement reached during eldercaring coordination, unless the
389 parties agree otherwise, or to any eldercaring coordination
390 communication:

391 1. Necessary to identify, authenticate, confirm, or deny a
392 written and signed agreement entered into by the parties during
393 eldercaring coordination.

394 2. Necessary to identify an issue for resolution by the
395 court, including to support a motion to terminate eldercaring
396 coordination, without otherwise disclosing communications made
397 by any party, participant, or the eldercaring coordinator.

398 3. Limited to the subject of a party's compliance with the
399 order of referral to eldercaring coordination, orders for
400 psychological evaluation, court orders or health care provider

401 recommendations for counseling, or court orders for substance
402 abuse testing or treatment.

403 4. Necessary to determine the qualifications of an
404 eldercaring coordinator or to determine the immunity and
405 liability of an eldercaring coordinator who has acted in bad
406 faith or with malicious purpose or in a manner exhibiting wanton
407 and willful disregard for the rights, safety, or property of the
408 parties pursuant to subsection (11).

409 5. The parties agree may be disclosed or for which
410 privilege against disclosure has been waived by all parties.

411 6. Made in the event the eldercaring coordinator needs to
412 contact persons outside of the eldercaring coordination process
413 to give or obtain information that furthers the eldercaring
414 coordination process.

415 7. That requires a mandatory report pursuant to chapter 39
416 or chapter 415 solely for the purpose of making the mandatory
417 report to the entity requiring the report.

418 8. Necessary to protect any person from future acts that
419 would constitute domestic violence under chapter 741; child
420 abuse, neglect, or abandonment under chapter 39; or abuse,
421 neglect, or exploitation of an elderly or disabled adult under
422 chapter 415 or chapter 825, or are necessary in an investigation
423 conducted under s. 744.2004 or a review conducted under s
424 744.368 (5).

425 9. Offered to report, prove, or disprove professional

426 misconduct alleged to have occurred during eldercaring
427 coordination, solely for the internal use of the body conducting
428 the investigation of such misconduct.

429 10. Offered to report, prove, or disprove professional
430 malpractice alleged to have occurred during eldercaring
431 coordination solely for the professional malpractice proceeding.

432 11. Willfully used to plan a crime, commit or attempt to
433 commit a crime, conceal ongoing criminal activity, or threaten
434 violence.

435 (d) An eldercaring coordination communication disclosed
436 under any provision of subparagraph (c)1., subparagraph (c)2.,
437 subparagraph (c)5., subparagraph (c)8., or subparagraph (c)9. is
438 confidential and is not discoverable or admissible for any other
439 purpose, unless otherwise permitted by this section.

440 (e) Information that is otherwise admissible or
441 discoverable does not become inadmissible or protected from
442 discovery by reason of its disclosure or use in eldercaring
443 coordination.

444 (f) A party that discloses or makes a representation about
445 a privileged eldercaring coordination communication waives that
446 privilege, but only to the extent necessary for the other party
447 or parties to respond to the disclosure or representation.

448 (g)1. An eldercaring coordination party or participant who
449 knowingly and willfully discloses an eldercaring coordination
450 communication in violation of this subsection, upon application

451 by any party to a court of competent jurisdiction, is subject to
452 remedies, including:

453 a. Equitable relief.

454 b. Compensatory damages.

455 c. Contribution to the other party's or parties' attorney
456 fees and costs, the other party's or parties' portion of the
457 eldercaring coordinator fees, and the other party's or parties'
458 portion of the costs incurred in the eldercaring coordination
459 process.

460 d. Reasonable attorney fees and costs incurred in the
461 application for remedies under this subsection.

462 2. Notwithstanding any other law, an application for
463 relief filed under this paragraph may not be commenced later
464 than 2 years after the date on which the party had a reasonable
465 opportunity to discover the breach of confidentiality, but in no
466 case more than 4 years after the breach.

467 3. An eldercaring coordination party or participant is not
468 subject to a civil action under this paragraph for lawful
469 compliance with s. 119.07.

470 (10) EMERGENCY REPORTING TO THE COURT.—

471 (a) An eldercaring coordinator must immediately inform the
472 court by affidavit or verified report, without notice to the
473 parties, if:

474 1. The eldercaring coordinator has made or will make a
475 report pursuant to chapter 39 or chapter 415; or

476 2. A party, including someone acting on a party's behalf,
477 is threatening or is believed to be planning to commit the
478 offense of kidnapping, as defined in s. 787.01(1), upon an
479 elder, or wrongfully removes or is removing the elder from the
480 jurisdiction of the court without prior court approval or
481 compliance with the requirements of s. 744.1098. If the
482 eldercaring coordinator suspects that a party or family member
483 has relocated an elder within this state to protect the elder
484 from a domestic violence situation, the eldercaring coordinator
485 may not disclose the location of the elder unless required by
486 court order.

487 (b) An eldercaring coordinator shall immediately inform
488 the court by affidavit or verified report and serve a copy of
489 such affidavit or report on each party upon learning that a
490 party is the subject of a final order or injunction of
491 protection against domestic violence or exploitation of an
492 elderly person or has been arrested for an act of domestic
493 violence or exploitation of an elderly person.

494 (11) IMMUNITY FROM AND LIMITATION OF LIABILITY.—

495 (a) A person who is appointed or employed to assist the
496 body designated to perform duties relating to disciplinary
497 proceedings involving eldercaring coordinators has absolute
498 immunity from liability arising from the performance of his or
499 her duties while acting within the scope of his or her appointed
500 functions or duties of employment.

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

507 (12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme
508 Court shall establish minimum standards and procedures for the
509 qualification, ethical conduct, discipline, and training and
510 education of eldercaring coordinators who serve under this
511 section. Pending establishment of minimum standards and
512 procedures for the discipline of eldercaring coordinators, the
513 order of referral by the court may address procedures governing
514 complaints against the appointed eldercaring coordinator
515 consistent with this section. The Florida Supreme Court may
516 appoint or employ such personnel as are necessary to assist the
517 court in exercising its powers and performing its duties under
518 this section.

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