

Notice of Proposed Rule

DEPARTMENT OF ELDER AFFAIRS

Office of Public and Professional Guardians

RULE NOS.:RULE TITLES:

- 58M-2.001 Professional Guardian Registration and Credit Investigation
- 58M-2.002 Credit History Screening
- 58M-2.003 Professional Guardian Coursework and Competency Examination
- 58M-2.004 Annual Renewal of Professional Guardian Registration
- 58M-2.006 Professional Guardian Monitoring
- 58M-2.007 Electronic Fingerprint Criminal History Record Check
- 58M-2.010 Complaint Investigation and Procedures
- 58M-2.011 Disciplinary Action and Guidelines

PURPOSE AND EFFECT: The proposed rules update existing rules and add new rules related to the registration of profession guardians, adding rules related to annual renewals, professional guardian monitoring, and complaint investigation and close-out procedures

SUMMARY: Provides the requirements for registration as a professional guardian and for registration renewals, including the process for screening an applicant's credit history, the required education coursework and competency, and criminal background screening. Provides the process for investigating complaints against professional guardians and disciplinary actions and guidelines for violations of the standards of care.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The department's economic analysis of the adverse impact of potential regulatory costs of the proposed rule did not exceed any of the criteria established in Section 120.541(2)(a), Florida Statutes. The proposed rules are being amended to comply with statutory changes, update incorporated forms, national standards, references to incorporated material, qualifier eligibility, testing requirements, consumer protection, definition, and penalties. There are no increased regulatory costs associated with these revisions. No interested party submitted additional information regarding the economic impact.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days after publication of this notice.

RULEMAKING AUTHORITY: 744.2002(6), 744.2003(6)(b), 744.2004(1), 744.20041(4), 744.3135(5)(b), FS.

LAW IMPLEMENTED: 744.2001, 744.2002, 744.2003, 744.2004, 744.20041, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: September 23, 2026; 2:00 p.m.

PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225F, Check in with security desk.

Microsoft Teams join on your computer, mobile app or room device by copy and pasting the link below:

[https://gcc02.safelinks.protection.outlook.com/ap/t-](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fmeet%2F273614882817975%3Fp%3DLSlsYXLcqq2h6GLEgA&data=05%7C02%7Csaylere%40elderaffairs.org%7C104e7cd2ed1b4696f29a08df02de6df0%7Cf75a7744d4bf46238660bcfa3569c2a0%7C0%7C0%7C639232826496246595%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMlIsIkFOIjoiTWFpbGlldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=AyJHAatvYC9XkOExL1%2FWn31frD6oCiYaY1B6roB5QhU%3D&reserved=0)

[59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fmeet%2F273614882817975%3Fp%3DLSlsYXLcqq2h6GLEgA&data=05%7C02%7Csaylere%40elderaffairs.org%7C104e7cd2ed1b4696f29a08df02de6df0%7Cf75a7744d4bf46238660bcfa3569c2a0%7C0%7C0%7C639232826496246595%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMlIsIkFOIjoiTWFpbGlldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=AyJHAatvYC9XkOExL1%2FWn31frD6oCiYaY1B6roB5QhU%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fmeet%2F273614882817975%3Fp%3DLSlsYXLcqq2h6GLEgA&data=05%7C02%7Csaylere%40elderaffairs.org%7C104e7cd2ed1b4696f29a08df02de6df0%7Cf75a7744d4bf46238660bcfa3569c2a0%7C0%7C0%7C639232826496246595%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMlIsIkFOIjoiTWFpbGlldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=AyJHAatvYC9XkOExL1%2FWn31frD6oCiYaY1B6roB5QhU%3D&reserved=0)

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 2 days before the workshop/meeting by contacting: Kyle Harmer, Operations Manager, Office of Public and Professional Guardians, 4040 Esplanade Way,

Tallahassee, FL 32399, (850)414-2030, oppginfo@elderaffairs.org. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kyle Harmer, Operations Manager, Office of Public and Professional Guardians, 4040 Esplanade Way, Tallahassee, FL 32399, (850)414-2030, oppginfo@elderaffairs.org.

THE TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 58M-2.001, F.A.C. follows. See Florida Administrative Code for present text.

58M-2.001 Professional Guardian Registration and ~~Credit Investigation~~.

(1) All Professional Guardians, as defined in section 744.102(17), F.S., must register with the Department of Elder Affairs' Office of Public and Professional Guardians (OPPG), and must renew that registration on an annual basis. A new applicant for initial registration must complete the Professional Guardian Registration Application using an online form, which is available on the OPPG website at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/>. Once the application form is completed and signed, the applicant may submit the form as instructed on the website, deliver or mail the document to Florida Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399, or email the document to OPPGregistration@elderaffairs.org. The applicant must provide and attest to the following information to register as a professional guardian:

(a) Professional guardian identifying information:

1. Name and date of birth;
2. Residential or business address;
3. Official mailing address;
4. Social Security number;
5. Email address;
6. Telephone number;
7. Corporate name, if applicable;
8. EIN, if applicable; and
9. Counties of practice.

(b) Credit and criminal history documentation:

1. Proof of Level II fingerprinting/background screening report pursuant to section 435.04, F.S.; and
2. Credit report.

(c) Education and training documentation:

1. Certificate of completion for the 40-hour professional guardian course; and
2. Other education and training information, including: High school; College; Graduate/professional education; Professional licenses; Professional certifications; and Other relevant training or education.

(d) Employment information:

1. Current employer;
2. Business address;
3. Position/title;
4. Dates of employment; and
5. Employment history for the previous 10 years.

(e) State competency examination documentation:

1. Date of examination;
2. Examination score; and
3. Certificate of completion.

(f) Blanket fiduciary bond documentation:

1. Name of bonding company;
2. Bond amount;
3. Individual or corporate designation; and
4. Copy of bond.

(g) Registration fee: Proof of payment of a non-refundable application registration fee of \$50.

(h) Additional supporting information, such as a resume or recommendations, may be submitted but is not required.

(2) Documentation submitted with the initial registration must be current and dated no more than six (6) months prior to submission. Incomplete applications or those submitted without signatures or with outdated documentation will be considered deficient and will not be accepted.

(3) The OPPG will review each application and notify applicants within 30 days of any missing information or documentation. Failure to cure the application deficiencies within 60 calendar days from the date of the notice will result in a closeout of the initial application. In order to reactivate a closed initial registration, the applicant must submit a new application packet and application fee along with current and updated documentation.

(4) Once the application packet is complete, OPPG will review the results of the Level 2 background screening to determine if there is a criminal offense that would disqualify the applicant from registration or appointment in accordance with section 435.04, F.S., or section 744.309(3) F.S. OPPG may inquire about details of any sealed or expunged offenses noted on the criminal history report. Applicants will be notified of any disqualifying offense and whether they are eligible to request an exemption from disqualification. A court order granting an exemption from disqualification may only be sufficient as to a specific ward. Disqualified persons, as defined in section 744.309(3), F.S., will not be registered by OPPG as a professional guardian even if the applicant has been granted an exemption from other agencies pursuant to section 435.07, F.S.

(5) A professional guardian's initial registration period will be updated on the OPPG public profile website once OPPG approves the registration.

(6) A professional guardian who hires an employee either before or after registration approval, must notify OPPG of the employee's name, social security number, position title, and their duties and responsibilities, and may use the notification form available on the OPPG website. If the employee is to function as an "employee with fiduciary responsibility" as defined in paragraph 58M-2.002(2)(d), F.A.C., the employee must submit fingerprints for a Level 2 criminal background screening and a current credit report for OPPG's review, prior to beginning employment.

(7) Professional guardians must notify the OPPG within ten (10) business days upon the voluntary or involuntary termination of any employee. All registered professional guardian employers are responsible for reporting and maintaining current information on all employees and notifying OPPG of any changes in personnel or their duties and responsibilities. OPPG will monitor all public and professional guardians for compliance with this notification requirement.

(8) Denial by OPPG of a registration to become a professional guardian will be governed by Chapter 120, F.S. Rulemaking Authority 744.2002(6), 744.3135(5)(b) FS. Law Implemented 744.102(17), 744.2002, 744.2003, 744.3135 FS. History--New 5-4-03, Amended 12-12-05, 3-17-08, 3-1-17,___.

58M-2.002 Credit History Screening

(1) Credit History Review: Each professional guardian has a fiduciary obligation to the ward and is required to submit to OPPG a credit report at the time of initial registration, and again every two (2) years after the initial registration when renewing that registration. The OPPG will review the total credit history information to determine if the new or renewing applicant has acted in a fiscally responsible manner when managing personal and business finances and property interests.

(2) Definitions of terms as used in this Rule Chapter:

(a) "Adverse Credit Information" or "Adverse Credit History" for purposes of registration as a professional guardian or employee of a professional guardian includes, but is not limited, to the following:

1. Personal Bankruptcy appearing on the individual's credit report.

2. Organizational Bankruptcy appearing on a credit report in which the individual was an officer, registered agent, or spouse of an officer, a guarantor, or was in a position of organizational control at the time of the bankruptcy filing.

3. Open individual or joint collection accounts, or charged-off accounts, except those related to unpaid personal medical expenses.

4. Foreclosure or repossession of personal property or eviction from any residential or business rental or lease, owned or occupied by the applicant.

5. Tax liens, government liens, or any outstanding judgments that remain unpaid at the time of application.

6. Unpaid restitution, fines, or loans, including student loans.

(b) “Credit Score” means a credit score from Fair Issac Corporation (FICO®) or other nationally recognized credit bureau or scoring model. FICO® scores under 600 will be considered adverse credit information and applicants for a new professional guardian registration and any employees with fiduciary responsibility must provide further documentation including an explanation of any compelling circumstances.

(c) “Charged-off debt” means an account that has been identified by a creditor as an uncollectable debt.

(d) “Employee with fiduciary responsibility” means an employee of a professional guardian who has the authority to direct any transaction of a ward’s funds, assets, or property, who manages the care of a ward through in-person visits or other routine contact.

(e) “Professional guardian” means any guardian who has at any time rendered services to three or more wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2), F.S., is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

(3) The following factors will be considered when reviewing the credit history information of applicants for registration as a professional guardian and during the applicable annual renewal:

(a) The applicant’s entire credit history will be considered as well as any relevant circumstances related to the credit history, including employment information.

(b) Compelling factors outside the immediate control of the applicant, such as medical, economic, domestic, or academic events that resulted in a permanent or temporary inability to meet financial obligations.

(c) Overall efforts taken to improve credit history and actions taken to avoid future financial difficulty.

(d) Any steps taken toward rehabilitation, including credit counseling or other preventative measures to avoid a reoccurrence.

(e) Any notification to creditors, law enforcement or regulatory agencies, or credit reporting agencies of errors or unlawful account activity.

(4) Any protections afforded credit reports or other information pursuant to state or federal law will apply to the credit report(s) provided to OPPG.

(5) All professional guardians, including an employing business entity, must not employ any individual in a fiduciary capacity whose credit report does not meet the same standards of fiscal responsibility expected of a registered professional guardian. The OPPG will maintain credit reports of all reported employees, which may be considered in assessing the professional guardian’s responsibility for any violations by an employee.

(6) A professional guardian may be disciplined for selecting or delegating responsibilities to persons, employees, or contractors that the professional guardian knows, or has reason to know, are not qualified by training, experience, or licensure to perform or provide the particular services assigned.

(7) Any statutory exceptions to the registration, education, and regulation of professional guardians or employees provided to certain business entities will also apply to credit reporting requirements.

Rulemaking Authority 744.2002(6), 744.3135(5)(b) FS. Law Implemented 744.102(17), 744.2002, 744.2003, 744.3135 FS. History–New .

Substantial rewording of Rule 58M-2.003, F.A.C. follows. See Florida Administrative Code for present text.

58M-2.003 Professional Guardian Coursework and Competency Examination.

(1) All instruction and training for professional guardians required pursuant to s. 744.2003(3), F.S., must be approved by the Office of Public and Professional Guardians (OPPG) in order to receive credit toward either the initial 40-hour course or the continuing education course requirements. Information about approved coursework or approved trainers may be obtained online from the OPPG website at <https://elderaffairs.org/>. OPPG may allow credit for certain courses and training in related fields, but only if OPPG has been provided the opportunity to review and approve the course syllabus and training provider prior to attendance.

(2) Completion of the initial 40-hour professional guardian instruction and training course is mandatory for all applicants to be eligible to take the competency examination, unless otherwise exempted by statute.

(a) Applicants must score a minimum of 75% on the competency examination in order to register as a professional guardian.

(b) Applicants failing to meet the required score after taking the competency examination twice will be required to repeat the initial 40-hour professional guardian instruction and training course before being permitted to sit for the competency examination for a third time.

(c) Any applicant who completes the initial 40-hour course and successfully completes the examination, but does not register with OPPG within one year following completion of the course, must retake and complete the initial 40-hour course and retake the competency examination, even if employed by a professional guardian during that period.

(d) Instruction and training requirements do not apply to attorneys licensed to practice law in Florida or institutions acting as guardians pursuant to section 744.2002(7), F.S.

(4) Mandatory continuing education unit (CEU) credits must be reported every two (2) years following completion of the initial 40-hour course. If the initial course was completed in an odd-numbered year, the mandatory CEU credits must be completed and reported on or before December 31 of the subsequent odd-numbered year. Those who completed the initial course in an even-numbered year will be responsible for completing and reporting the mandatory CEU credits by the conclusion of the subsequent even-numbered year. The reporting cycle is based upon on the year the CEU course was completed, not the date of the examination or registration.

(5) Failure to comply with the mandatory CEU requirements will result in the suspension of the professional guardian's registration. If documentation of CEU completion is not reported or available to OPPG on or before January 31 following the last day of the year of the reporting cycle, the registration will be suspended until the requirement is met.

(6) Professional guardians whose OPPG registration has been suspended for failure to complete required CEUs and whose registration remains suspended for more than 180 days but less than one year from the reporting deadline, must submit the following to OPPG to be returned to active status:

(a) An updated Level 2 criminal background screening;

(b) A current credit report;

(c) Documentation of the completion of the required Continuing Education Unit (CEU) hours for the applicable reporting period.

(7) Professional guardians whose OPPG registration has been suspended for failure to complete required CEUs and whose registration remains suspended for more than one year (365 days) from the reporting deadline must initiate a new registration process, including submittal of all requirements listed in subsection (6) as well as successful completion of the initial 40-hour training course and competency examination. Any waiver applied to the original examination requirement will not be applicable to the repeat examination.

(8) Professional guardians will be able to register for approved courses through the OPPG-recommended online exchange. Professional guardians who have completed coursework through the online exchange will also be able to access transcripts through the exchange. For previously approved courses not included in the exchange, official transcripts must be provided to OPPG to receive appropriate credit.

Rulemaking Authority 744.2003 744.1083(6), 744.1085(6)(b) FS. Law Implemented 744.102(17), 744.2003 744.1083, 744.1085, 744.3135 FS. History--New 12-12-05, Amended 3-17-08,___.

58M-2.004 Annual Renewal of Professional Guardian Registration.

(1) Each professional guardian must submit a renewal application to OPPG annually to maintain registration. The professional guardian's registration will expire at midnight, one year from the date of the original registration. The OPPG will provide a registration reminder at least 60 days prior to the professional guardian's registration expiration. The renewal applicant must complete the Professional Guardian Renewal Application using an online form, which is available on the OPPG website at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/>. Once the renewal application form is completed and signed, the applicant may submit the form as instructed on the website, deliver or mail the document to Florida Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399, or email the document to OPPGregistration@elderaffairs.org. The renewal applicant must provide the following information to renew the registration as a professional guardian:

(a) Professional guardian identifying information:

1. Name;

2. Florida registration number;

3. Email and telephone information;

4. Business/employer name;

5. Business/employer physical address;

6. Business/employer mailing address, if different;

7. Date of initial registration; and

8. Counties of practice.

(b) Employee names and information:

1. Last four digits of each employee's Social Security number; and

2. Indication of whether each employee has fiduciary responsibilities to a ward.

(c) Social Security number or EIN for the professional guardian, as required by section 744.2002(3), F.S.

(d) Copy of the fiduciary bond.

(e) Renewal Registration fee: Proof of payment of a non-refundable renewal registration fee of \$35. Fees may be paid through the online OPPG payment link or by personal or corporate check.

(f) Every 2 years, as applicable, at the professional guardian's expense, a credit-history investigation for:

1. The professional guardian; and

2. Each employee with fiduciary responsibilities to a ward.

(g) Every 5 years after original registration, as applicable, Level II criminal background screening for:

1. The professional guardian; and

2. Employees as required by s. 430.0402 and 744.2003(5), F.S.

(2) Any changes in staffing must be noticed as required in subsections 58M-2.001(6) and (7), F.A.C.

(3) The OPPG registrar will review all renewal applications for required documentation. The OPPG will notify the applicant in writing within 30 days of any missing information or documentation. The applicant for registration renewal must provide the requested information within 30 days after notification. Failure to provide the requested material within 90 days following notification will result in expiration of the registration and the public website will be updated to reflect the change in status, unless an extension for good cause has been granted prior to the expiration.

(4) All required updates to credit reports or background screening must be submitted at required intervals to ensure the information on file with OPPG is within the appropriate time window. If due, updates must be submitted no later than the date of annual renewal.

(5) Proof of compliance with CEU requirements must be submitted as provided in subsection 58M-2.003(4), F.A.C.

(6) Any professional guardian submitting an application for registration renewal more than 90 days after the registration renewal deadline must submit the required renewal documentation and renewal fee. The professional guardian's registration status on the OPPG public website will be marked expired as required by s. 744.2001(7), F.S., until the renewal documentation is received and approved by OPPG. Professional guardians whose OPPG registration has been expired for 180 days or more from the registration renewal date must initiate a new registration process in accordance with Rule 58M-2.001, F.A.C., including successful completion of the initial 40-hour training course and competency examination.

(7) Any professional guardian who is unable to comply with any filing deadlines may request an extension for good cause in writing through the OPPG registrar prior to the date of expiration.

(8) Denial of an annual renewal of registration shall be governed by Chapter 120, F.S., as applicable.

Rulemaking Authority 744.2002(6), 744.3135(5)(b) FS. Law Implemented 744.102(17), 744.2002, 744.2003, 744.20041, 744.2112(4), 744.3135 FS. History--New .

58M-2.006 Professional Guardian Monitoring.

OPPG will monitor professional guardians for compliance with the standards of practice established by rule. Professional guardians must comply with all survey and monitoring inquiries by OPPG, including those related to staff reporting and compliance with the standards of practice for guardians of the person and/or property.

Rulemaking Authority 744.2001(3)(a), 744.2001(7)(c) FS. Law Implemented 744.2001 FS. History- New .

Substantial rewording of Rule 58M-2.007, F.A.C. follows. See Florida Administrative Code for present text.

58M-2.007 Electronic Fingerprint Criminal History Record Check.

(1) Professional Guardians and all employees of professional guardians must complete a Level 2 background screening conducted by an OPPG-approved vendor and are encouraged to use electronic fingerprinting methods. A list of OPPG-approved vendors and instructions are available on the OPPG website at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/>.

(2) The approved vendor will submit fingerprints to the Florida Department of Law Enforcement, which will conduct a Level 2 criminal background investigation and provide results directly to OPPG. OPPG will review the criminal history results to ensure that the applicant does not have a disqualifying arrest or conviction, regardless of adjudication, pursuant to Sections 435.04, 435.07, and 744.309, F.S., or any other offense that would disqualify the applicant under Florida law or a similar law of another jurisdiction.

(3) Professional Guardians and their employees are required to fully disclose all criminal history regardless of whether the case has been expunged or sealed. This requirement does not apply to juvenile delinquency adjudications if the record has been sealed or expunged.

(4) The OPPG will notify the applicant in writing of any disqualifying offenses. The OPPG may require additional details and documentation from the applicant for any offense identified in the background screening, even if not a disqualifying offense, including those that have been sealed or expunged. OPPG will notify the employer of the disqualification but will not disclose specific details of any disqualifying offense.

(5) Applicants whose registration was denied due to disqualifying offenses will be notified if eligible for an exemption from disqualification pursuant to s. 435.07, F.S. An exemption from disqualification does not, however, prohibit a court from denying an appointment as a professional guardian or any entity from denying employment.

(6) A professional guardian arrested for any disqualifying offenses under s. 744.309(3) F.S., will notify the OPPG, in writing, within 10 days of the arrest, or upon receipt of notice to appear if not taken into physical custody. The professional guardian will notify OPPG of any final disposition and provide supporting documentation of any final disposition to the OPPG registrar. This notification is in addition to any reporting requirements by the Clerk of Court or appointing authority.

Rulemaking Authority 744.3135 FS. Law Implemented 744.3135 FS. History–New 3-17-08, Amended .

58M-2.010 Complaint and Investigation Procedures.

(1) Filing Complaints. Anyone may file a complaint against a professional guardian at any time using any method of communication. Complainants may file online through the OPPG website at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/>; by mail to the Florida Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399 (Attn: OPPG); by email to OPPGcomplaint@elderaffairs.org; or by telephone during regular business hours at (850)414-2381.

(a) Complaints, the identities of complainants, and all information related to the complaint and investigation are confidential and exempt from public disclosure until the investigation is completed or ceases to be active.

(b) Once an investigation is completed or ceases to be active, certain information related to the complaint will remain confidential and exempt such as personal identifying information and personal health and financial records pursuant to section 744.2111, F.S.

(2) Legal Sufficiency. The OPPG will promptly review any complaint filed with OPPG to determine legal sufficiency as defined in section 744.2004(1)(a), F.S. Additional information may be requested during the legal sufficiency review process as needed to make this determination. If a complaint alleges abuse, neglect, or exploitation of a professional guardian's ward as defined in Ch. 415, F.S., OPPG will forward the complaint to law enforcement, the Florida Department of Children and Families (DCF) Adult Protective Services, or other enforcement authorities.

(a) If a complaint is determined to be legally sufficient, the Department will initiate an investigation within ten (10) business days.

(b) If the complaint is determined not to be legally sufficient, OPPG will notify the complainant no later than ten (10) business days after making the determination.

(c) OPPG will notify the complainant within 45 days of receipt of a legally sufficient complaint regarding the current status of any investigation.

(d) OPPG will notify the professional guardian within 45 days of receipt of a legally sufficient complaint

regarding the nature of the complaint.

(e) A complaint may be dismissed during legal sufficiency review if it is determined that:

1. there are no ultimate facts to support any allegation that the professional guardian violated a standard of practice;

2. OPPG lacks statutory authority to investigate the complaint; or

3. the complaint concerns a non-professional guardian.

(3) Complaint Investigation.

(a) Investigation Interviews. For each person interviewed during the course of the investigation, including the complainant, the professional guardian, and interested parties, the interview must be conducted under oath. If the person is unable or unwilling to provide sworn testimony for any reason, that will be noted in the investigative report. Any person may be represented by legal counsel during an interview with the investigator.

(b) Documentary Evidence. The investigator may obtain documents from any source during the course of the investigation. The failure to provide any requested documentation will be noted in the investigative report.

(c) At any time during the investigation, if there is evidence that reveals abuse, neglect or exploitation of a professional guardian's ward or any vulnerable adult as defined in Ch. 415, F.S., the Department will immediately notify DCF Adult Protective Services (APS) in accordance with section 744.2004(5) F.S.

(d) At any time during the investigation, if there is evidence that raises concerns about the wellbeing of the ward, but does not rise to the level of abuse, neglect or exploitation as defined in Ch. 415, F.S., the OPPG Executive Director must be notified and may notify the court with jurisdiction over the appointment along with service to all interested parties.

(e) At any time during the investigation, if there is evidence that reveals criminal conduct, the Department will notify the appropriate law enforcement agency having jurisdiction over the alleged conduct, without notice to the complainant or professional guardian. The Department may also refer matters to the Office of the Attorney General, Medicaid Fraud Control Unit, or other entities with overlapping jurisdiction.

(f) At any time during the investigation, if evidence indicates that the alleged violation may impact the health, safety, or welfare of a ward, or the professional guardian poses a serious risk to the general public, the OPPG Executive Director will be notified immediately.

(g) Investigative Report. Department investigators will prepare an investigative report and upon completion, provide the report to the OPPG Executive Director. The investigative report will detail findings concerning the allegations contained in the complaint. If additional violations are identified during the course of the investigation that were not alleged in the complaint, findings concerning those violations will be included in the report. The investigative report is confidential pursuant to section 744.2111, F.S.

(4) Administrative Determination.

(a) The OPPG will conclude an investigation following review of the investigative report and related information from the courts or other agencies, and determine whether any violation of a standard of practice has occurred.

(b) If the OPPG determines that the professional guardian violated the standards of practice, the Department shall take disciplinary action against the professional guardian as described in section 744.20041, F.S., and Rule 58M-2.011, F.A.C.

(c) If the OPPG determines that the professional guardian did not violate the standards of practice, the OPPG will dismiss the complaint.

(d) Within 10 business days of the conclusion of the investigation, the complainant and professional guardian will be notified by written statement specifying the violation(s) of the standards of practice and actions to be taken, or that no such violation was found.

(5) Administrative Complaint.

(a) If there is sufficient evidence that the standards of practice were violated, the Department will issue an administrative complaint to the professional guardian which shall identify the specific violation(s), the proposed discipline, and the proposed fine amount. The Department shall include with the administrative complaint instructions for requesting a hearing and, at the discretion of the Department, a draft settlement agreement. If offered, the professional guardian may enter into a settlement agreement regarding the proposed violation(s) at any time.

(b) The Department will not take any disciplinary action against a professional guardian until resolution of the administrative complaint through either settlement or final order in accordance with Chapter 120, F.S.

(c) The filing of the administrative complaint with the agency clerk will constitute a substantiated complaint in accordance with section 744.2001(7), F.S.

(d) Any disciplinary action taken by the Department shall be published in accordance with section 744.2001(7), F.S.

(e) All final orders resulting from administrative proceedings will be available through the public portal on the OPPG website <https://elderaffairs.org/> and at the DOAH website <https://www.doah.state.fl.us/>.

Rulemaking Authority 744.2001(7)(c), 744.2004(6) FS. Law Implemented 744.2001, 744.2004 FS History–New

58M-2.011 Disciplinary Action and Guidelines.

(1) Purpose. Pursuant to Section 744.20041, F.S., the Office of Public and Professional Guardians provides disciplinary guidelines in this rule for applicants or guardians over whom it has oversight. The purpose of this rule is to notify applicants and guardians of the range of penalties and fines which will ~~regularly~~ be imposed for violations, and the basis for which, ~~unless~~ the Office of Public and Professional Guardians ~~may find it necessary to deviate from the guidelines for the stated reason given in this rule.~~ The range of penalties are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violations may result in greater penalties ~~a higher penalty~~. Each range includes the lowest and highest penalties that may be imposed for that violation. All ~~For applicants, all~~ offenses listed in the Disciplinary Guidelines are sufficient to support the denial of or refusal to certify an application for registration or renewal. The rule also includes aggravating and mitigating factors that OPPG may consider in imposing or deviating from the range of penalties. ~~The Office of Public and Professional Guardians may find it necessary to deviate from the guidelines for the reasons stated in subsection (3) of this rule.~~

(2) The OPPG enforcement authority is limited to administrative actions related to applications and registrations of professional guardians and does not extend to criminal or judicial enforcement. The OPPG may, however, take action against an application or registration based upon judicial orders or criminal actions. The OPPG may post on its public profile website any judicial orders of suspension or other public record information related to criminal conduct or disqualifying offenses. Violations and Range of Penalties. In imposing discipline upon applicants and guardians, the Office of Public and Professional Guardians shall act in accordance with guidelines and shall impose a penalty within a range corresponding to the violations set forth in form DOEA/OPPG Form 003, Office of Public and Professional Guardians Disciplinary Guidelines (February 2017), incorporated herein by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref 07914>, unless the Office of Public and Professional Guardians finds it necessary to deviate from the guidelines for the stated reasons given in subsection (3), of this rule.

(3) Definition of terms used in this rule: The Office of Public and Professional Guardians shall take into consideration the danger to the public; the number of repetitions of offenses; the length of time since the date(s) of violation; the number of disciplinary actions taken against the guardian; the length of time the guardian has practiced; the actual damage, physical or otherwise, to the ward; the deterrent effect of the penalty imposed; any efforts for rehabilitation; and any other mitigating or aggravating circumstances in determining the appropriate disciplinary action to be imposed.

(a) “Letter of Guidance” means a written non-disciplinary notice to a professional guardian regarding actions that may not rise to a level constituting a violation or requiring disciplinary action, but instead designed to mitigate circumstances, prevent future discipline, and distinguish minor issues from those which endanger the health, safety, or welfare of a ward or the public. A Letter of Guidance will not be published on the OPPG public profile website.

(b) “Remedial action” means a corrective action including additional education requirements or specific performance improvement to avoid or prevent recurrence of minor technical violations. A remedial action will be published on the OPPG public profile website.

(c) “Reprimand” or “Letter of Concern” is a written disciplinary action identifying conduct or practices of concern and providing a warning of possible enforcement action if the same conduct or practices continue resulting in a subsequent violation. Reprimands and Letters of Concern may include a requirement for remedial action or the imposition of other penalties as specified therein and will be published on the OPPG public profile website.

(d) “Suspension” is a disciplinary action that temporarily deactivates the registration of a professional guardian. The professional guardian is prohibited from accepting new court appointments during the period of suspension. A disciplinary suspension will be published on the OPPG public profile website.

(e) “Revocation” is a disciplinary action that permanently terminates the registration of a professional guardian as set forth in s. 744.20041(8), F.S. A revocation will be published on the OPPG public profile website. Upon final order, the revocation removes the professional guardian from all current appointments in all Florida courts. The revocation also prohibits any future guardianship appointments and serving as a registered professional guardian in the State of Florida.

(4) Aggravating or mitigating factors. The OPPG or the professional guardian may present additional evidence for consideration when imposing discipline for any violation. The following factors constitute aggravating or mitigating factors:

(a) Actual harm to the ward(s). Harm may be physical, financial, or otherwise to the ward’s person or property.

(b) Actual harm or potential risk of harm to the public;

(c) The number and type of current or past violations;

(d) The presence or absence of prior violations, including repeat violations;

(e) The time that has passed since any prior or repeat violation(s);

(f) The length of time the professional guardian has been registered without prior concerns or discipline;

(g) Any attempt to correct the violation(s);

(h) Efforts by the professional guardian towards rehabilitation;

(i) Acceptance of responsibility;

(j) Discipline or penalties imposed by other entities or agencies; and

(k) A court order related to any violation.

(5) Disciplinary Guidelines. Grounds for discipline are listed in Section 744.20041(1) F.S. Discipline may also include restitution for any funds obtained or disbursed in violation of law or standard of practice, and one or more of the penalties set forth in Section 744.20041(2), F.S.

(6) Penalty Matrix. The matrix below identifies violations and the range of penalties for each violation. The penalty imposed will depend on the facts of each case and consideration of the aggravating and mitigating factors enumerated in subsection (4) of this rule. Fines may not exceed \$500 per violation.

PENALTY MATRIX

<u>Rule</u>	<u>STATUTE</u>	<u>VIOLATION</u>	<u>FIRST OFFENSE</u> Fine: \$0-\$250	<u>SUBSEQUENT OFFENSE</u> Fine: \$250-\$500
(a)	s. 744.20041(1)(a), F.S.	<u>Making misleading, deceptive, or fraudulent representations in, or related to the practice of, guardianship.</u>	<u>From a letter of concern to a written reprimand up to revocation.</u>	<u>From suspension to revocation.</u>
(b)	s. 744.20041(1)(b), F.S.	<u>Violating any rule governing guardians or guardianships adopted by the Office of Public and Professional Guardians (OPPG).</u>	<u>From a letter of concern to written reprimand to suspension or revocation.</u>	<u>From a letter of concern or written reprimand to suspension or revocation.</u>
(c)	s. 744.20041(1)(c), F.S.	<u>Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which</u>	<u>For a misdemeanor, from restitution to two year’s suspension; for a felony from restitution to 3 years suspension or</u>	<u>From two years suspension to revocation.</u>

<u>Rule</u>	<u>STATUTE</u>	<u>VIOLATION</u>	<u>FIRST OFFENSE</u> Fine: \$0-\$250	<u>SUBSEQUENT OFFENSE</u> Fine: \$250-\$500
		<u>relates to practice of or the ability to practice as a professional guardian.</u>	<u>revocation.</u>	
(d)	<u>s. 744.20041(1)(d), F.S.</u>	<u>Failing to comply with educational course requirements contained in s. 744.2003, F.S.</u>	<u>Suspension until such time as the professional guardian can demonstrate that he or she has met the educational course requirements.</u>	<u>Suspension until such time as the professional guardian can demonstrate that he or she has met the educational course requirements.</u>
(e)	<u>s. 744.20041(1)(e), F.S.</u>	<u>Having a registration, a license, or the authority to practice a regulated profession revoked, suspended, or otherwise acted against, including the denial of registration or licensure by the licensing authority of any jurisdiction, its agencies or subdivisions, for a violation under Florida law. The registering or licensing authority's acceptance of a relinquishment of registration or licensure, or other action listed in statute, shall be construed as an action against the registration, or license.</u>	<u>Action consistent with discipline for the offense that would have been taken if the violation occurred in Florida w/consideration of the penalty imposed in another jurisdiction.</u>	<u>Action consistent with discipline for a repeat offense that would have been taken if the violation occurred in Florida w/consideration of the penalty imposed in the other jurisdiction.</u>
(f)	<u>s. 744.20041(1)(f), F.S.</u>	<u>Knowingly filing a false report or complaint with the OPPG against another guardian.</u>	<u>Suspension for 2 years.</u>	<u>Revocation</u>
(g)	<u>s. 744.20041(1)(g), F.S.</u>	<u>Attempting to obtain, obtaining, or renewing a registration or license to practice a profession by bribery, by fraudulent misrepresentation, or as a</u>	<u>From suspension for two years to revocation.</u>	<u>Revocation</u>

<u>Rule</u>	<u>STATUTE</u>	<u>VIOLATION</u>	<u>FIRST OFFENSE</u> <u>Fine: \$0-\$250</u>	<u>SUBSEQUENT OFFENSE</u> <u>Fine: \$250-\$500</u>
		<u>result of an error by the OPPG which is known and not disclosed to the OPPG.</u>		
(h)	<u>s. 744.20041(1)(h), F.S.</u>	<u>Failing to report to the OPPG any person who the professional guardian knows is in violation of this chapter or the rules of the OPPG.</u>	<u>From a letter of concern to a written reprimand to suspension for two years</u>	<u>From suspension for two years to revocation</u>
(i)	<u>s. 744.20041(1)(i), F.S.</u>	<u>Failing to perform any statutory or legal obligation placed upon a professional guardian.</u>	<u>From a letter of concern to a written reprimand up to 2 years suspension.</u>	<u>From two years suspension to revocation</u>
(j)	<u>s. 744.20041(1)(j), F.S.</u>	<u>Making or filing a report or record that the professional guardian knows to be false, intentionally or negligently failing to report or record required by state or federal law or willfully impeding or obstructing another person's attempt to do so. Such reports or records shall include only those that are signed in the guardian's capacity as a professional guardian.</u>	<u>From a letter of concern or written reprimand to two years suspension or revocation.</u>	<u>Revocation.</u>
(k)	<u>s. 744.20041(1)(k), F.S.</u>	<u>Using the position of guardian for the purpose of financial gain by a professional guardian or a third party, other than the funds awarded to the professional guardian by the court pursuant to s. 744.108, F.S.</u>	<u>From a written reprimand or a letter of concern to two years suspension or revocation.</u>	<u>From a written reprimand or a letter of concern to two years suspension or revocation.</u>
(l)	<u>s. 744.20041(1)(l), F.S.</u>	<u>Violating a lawful order of the OPPG or failing to comply with a lawfully issued subpoena of the</u>	<u>From a written reprimand to suspension for 2 years.</u>	<u>From 2-year suspension to revocation</u>

<u>Rule</u>	<u>STATUTE</u>	<u>VIOLATION</u>	<u>FIRST OFFENSE</u> Fine: \$0-\$250	<u>SUBSEQUENT OFFENSE</u> Fine: \$250-\$500
		<u>OPPG.</u>		
<u>(m)</u>	<u>s. 744.20041(1)(m), F.S.</u>	<u>Improperly interfering with an investigation or inspection authorized by statute, or rule with any disciplinary proceeding.</u>	<u>Suspension for 2 years.</u>	<u>Revocation.</u>
<u>(n)</u>	<u>s. 744.20041(1)(n), F.S.</u>	<u>Using the guardian relationship to engage or attempt to engage the ward, or an immediate family member or a representative of the ward, in a verbal, written, electronic or physical sexual activity.</u>	<u>Suspension for 2 years up to revocation.</u>	<u>Revocation</u>
<u>(o)</u>	<u>s. 744.20041(1)(o), F.S.</u>	<u>Failing to report to the OPPG in writing within 30 days after being convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.</u>	<u>From a written reprimand to suspension for up to 2 years or revocation.</u>	<u>From suspension for up to 3 years to revocation.</u>
<u>(p)</u>	<u>s. 744.20041(1)(p), F.S.</u>	<u>Being unable to perform the functions of a professional guardian with reasonable skill by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of substance or as a result of any mental or physical condition.</u>	<u>From referral for evaluation to suspension, until such time as the professional guardian demonstrates that he or she can resume the functions of a professional guardian with reasonable skill.</u>	<u>From referral for evaluation to suspension until such time as the professional guardian demonstrates that he or she can resume the functions of a professional guardian with reasonable skill.</u>
<u>(q)</u>	<u>s. 744.20041(1)(q), F.S.</u>	<u>Failing to post a blanket fiduciary bond pursuant to s. 744.2003, F.S.</u>	<u>Suspension until such time as the professional guardian demonstrates that he or she has met the statutory fiduciary bond requirement</u>	<u>Suspension until such time as the professional guardian demonstrates that he or she has met the statutory fiduciary bond requirement</u>

<u>Rule</u>	<u>STATUTE</u>	<u>VIOLATION</u>	<u>FIRST OFFENSE</u> <u>Fine: \$0-\$250</u>	<u>SUBSEQUENT OFFENSE</u> <u>Fine: \$250-\$500</u>
(r)	s. 744.20041(1)(r), F.S.	<u>Failing to maintain all records pertaining to a guardianship for a reasonable time after the court has closed a guardianship matter.</u>	<u>From a written reprimand or a letter of concern to suspension for 2 years.</u>	<u>From a written reprimand or a letter of concern to suspension for 2 years or revocation.</u>
(s)	s. 744.20041(1)(s), F.S.	<u>Violating any provision of chapter 744, F.S., or any rules adopted pursuant thereto.</u>	<u>From a written reprimand or a letter of concern to suspension for 2 years or revocation.</u>	<u>From suspension to revocation.</u>

Rulemaking Authority 744.20041 FS. Law Implemented 744.20041 FS. History—New 3-23-17, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kyle Harmer, Operations Manager, Office of Public and Professional Guardians, 4040 Esplanade Way, Tallahassee, FL 32399, (850)414-2030, oppginfo@elderaffairs.org.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michelle Branham, Secretary

DATE PROPOSED RULE WAS APPROVED BY AGENCY HEAD: August 25, 2026

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