

# STATE OF FLORIDA AUDITOR GENERAL

## Operational Audit

Report No. 2021-010  
August 2020

### DEPARTMENT OF ELDER AFFAIRS

Office of Public and Professional Guardians  
and Selected Administrative Activities



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Auditor General

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The Department of Elder Affairs is established by Section 20.41, Florida Statutes. The head of the Department is the Secretary who is appointed by the Governor and subject to confirmation by the Senate. During the period of our audit, the following individuals served as Department Secretary:

Richard Prudom	From January 8, 2019
Jeffrey Bragg	Through January 7, 2019

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# DEPARTMENT OF ELDER AFFAIRS

## Office of Public and Professional Guardians and Selected Administrative Activities

### ***SUMMARY***

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This operational audit of the Department of Elder Affairs (Department) focused on the Office of Public and Professional Guardians (OPPG) and selected administrative activities. The audit also included a follow-up on applicable findings noted in our report No. 2015-109. Our audit disclosed the following:

#### **Office of Public and Professional Guardians**

**Finding 1:** Contrary to State law, the OPPG did not establish policies and procedures for monitoring private professional guardians, develop or implement a monitoring tool, or monitor private professional guardians for compliance with OPPG standards of practice governing the conduct of professional guardians.

**Finding 2:** OPPG efforts to monitor Public Guardian Offices (PGOs) were not always adequate to ensure that: OPPG records evidenced that program monitors were free from conflicts of interest, all State guardianship rules were subject to adequate monitoring, Monitoring Tool responses were supported by and consistent with source documentation, and monitoring reports were appropriately reviewed and timely provided to PGOs.

**Finding 3:** OPPG complaint processing controls need improvement to ensure that: complaints are referred and related investigation activities are conducted in accordance with State law, OPPG policies and procedures, other guidelines, and management expectations; investigations include all applicable complaint allegations; and guardians and complainants are timely notified of whether disciplinary actions are taken.

**Finding 4:** Contrary to State law, the Department had not adopted rules for certain OPPG processes, including the process for investigating complaints.

**Finding 5:** OPPG controls need enhancement to ensure that, prior to reimbursing Clerks of the Court for the direct costs of guardianship complaint investigations, invoiced amounts are adequately supported and agree with established rates.

**Finding 6:** OPPG controls did not adequately promote the timely submittal of annual professional guardian renewal registrations or ensure that the courts responsible for appointing guardians were timely notified of lapses in guardian registration.

#### **Selected Administrative Activities**

**Finding 7:** Security controls over mobile device utilization need improvement to ensure the confidentiality, integrity, and availability of Department data and information technology resources.

**Finding 8:** Department controls over employee access to the Florida Accounting Information Resource Subsystem continue to need improvement to reduce the risk of unauthorized disclosure, modification, or destruction of Department data.

## **BACKGROUND**

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State law<sup>1</sup> designates the Department of Elder Affairs (Department) as the primary State agency responsible for administering human services programs for the elderly and for developing policy recommendations for long-term care. Among other responsibilities, the Department is to promote the prevention of neglect, abuse, or exploitation of elderly persons unable to protect their own interests and, to this end, administers a wide range of programs, including the Office of Public and Professional Guardians (OPPG).

## **FINDINGS AND RECOMMENDATIONS**

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### **OFFICE OF PUBLIC AND PROFESSIONAL GUARDIANS**

In enacting the Florida Guardianship Law,<sup>2</sup> the Legislature sought to establish a system that: permits incapacitated persons<sup>3</sup> to participate as fully as possible in all decisions affecting them; assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf.<sup>4</sup> The Legislature recognized<sup>5</sup> that private guardianship may be inadequate when there is no willing and responsible family member or friend, other person, bank, or corporation available to serve as guardian<sup>6</sup> for an incapacitated person, and such person does not have adequate income or wealth for the compensation of a private guardian.

State law<sup>7</sup> establishes the OPPG within the Department and provides that the Department Secretary is to appoint an Executive Director who is responsible for carrying out the purposes and functions of the OPPG in accordance with State and Federal law. Through the creation of the OPPG, State law<sup>8</sup> permits the establishment of Public Guardian Offices (PGOs) to provide guardianship services for incapacitated persons when no private guardian is available. However, a public guardian is only to be provided to those persons whose needs cannot be met through less restrictive means of intervention.

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<sup>1</sup> Section 430.03(1), Florida Statutes.

<sup>2</sup> Chapter 744, Florida Statutes.

<sup>3</sup> Section 744.102(12), Florida Statutes, defines an incapacitated person as a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.

<sup>4</sup> Section 744.1012(3), Florida Statutes.

<sup>5</sup> Section 744.1012(4), Florida Statutes.

<sup>6</sup> Section 744.102(9), Florida Statutes, defines a guardian as a person appointed by the court to act on behalf of a ward's person or property, or both.

<sup>7</sup> Section 744.2001(1), Florida Statutes.

<sup>8</sup> Section 744.1012(5), Florida Statutes.

State law<sup>9</sup> provides that the OPPG is responsible for the regulation and oversight of all professional guardians<sup>10</sup> who have been appointed by the court to provide guardianship services. Professional guardians can be further classified as either private guardians or public guardians.<sup>11</sup> Private professional guardians are compensated by the ward's<sup>12</sup> personal income or wealth.<sup>13</sup> Public professional guardians are employed by the PGOs and compensated through amounts appropriated by the Legislature. Pursuant to State law,<sup>14</sup> the OPPG is required to:

- Establish standards of practice for professional guardians.
- Review and approve the standards and criteria for the education, registration, and certification of professional guardians.
- Develop and implement a monitoring tool to ensure professional guardian compliance with OPPG standards of practice.
- Review the State's public guardian programs.
- Establish procedures to review, and if determined legally sufficient, investigate any complaint alleging that a professional guardian has violated OPPG standards of practice.
- Establish disciplinary proceedings, conduct hearings, and take administrative action based on the outcome of complaint investigations.

According to OPPG records,<sup>15</sup> the OPPG was responsible for the regulation and oversight of more than 550 professional guardians Statewide, including the investigation and discipline of guardians found to be in violation of State laws and rules. **EXHIBIT A** to this report shows the 17 PGOs the Department contracted with as of November 2019 to provide public professional guardianship services Statewide. According to OPPG records, during the 2017-18 fiscal year, the PGOs served 3,846 wards and placed 484 individuals on a waiting list for services.

As of July 2018, the Department had entered into a Memorandum of Understanding (MOU) with six county Clerks of the Court (Clerks)<sup>16</sup> pursuant to which the Clerks were responsible for investigating all complaints against professional guardians referred by the OPPG, and the OPPG was responsible for determining whether disciplinary or administrative action against a guardian was warranted.

According to OPPG records, during the period July 2017 through January 2019, the OPPG received 90 complaints against 57 guardians. Of the 90 complaints, the OPPG closed only 1 complaint which was initially received in December 2017. During that same period, the OPPG closed 31 complaints received

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<sup>9</sup> Section 744.2001, Florida Statutes.

<sup>10</sup> Section 744.102(17), Florida Statutes, defines a professional guardian as 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 is not considered a professional guardian.

<sup>11</sup> Public guardians are considered professional guardians for purposes of regulation, education, and registration, and provide guardianship services to persons who are indigent; have no friends or family willing or able to serve; and have been adjudicated incapacitated or meet the criteria to be eligible for a guardian advocate.

<sup>12</sup> The Department defined a ward as a person who was determined to be incapacitated and for whom a guardian was appointed under Chapter 744, Florida Statutes, or a person appointed a guardian advocate under Section 393.12, Florida Statutes.

<sup>13</sup> Section 744.1012(4), Florida Statutes.

<sup>14</sup> Section 744.2001(2) - (4), Florida Statutes.

<sup>15</sup> OPPG 2018 Annual Report.

<sup>16</sup> The Clerks included Lee County, Okaloosa County, Palm Beach County, Pinellas County, Polk County, and Sarasota County (effective October 2017). During the period July 2016 through June 2018, Lake County was also party to the MOU.

prior to July 2017 related to 23 guardians. Table 1 summarizes, by the date complaints were received and resulting investigation disposition, the complaints against guardians investigated and closed during the period July 2017 through January 2019.

**Table 1**  
**Summary of OPPG Closed Complaint Investigations**  
**July 2017 Through January 2019**

Date Complaints Received	Number of Complaints Closed	Number of Guardians Investigated	Investigation Disposition
July 2017 through January 2019	1	1	Letter of Concern <sup>b</sup>
Prior to July 2017	31	23 <sup>a</sup>	12 Letters of Concern <sup>b</sup> 13 No Disciplinary Action

<sup>a</sup> Some professional guardians were the subject of more than one closed complaint.

<sup>b</sup> A Letter of Concern addresses the investigation findings and the laws or rules violated and may recommend increased education or training.

Source: OPPG records.

Additionally, during the period July 2017 through January 2019, only one complaint led to an administrative action which resulted in the revocation of the guardian's registration in March 2019.

To operate the State's public guardian program, the Legislature appropriated approximately \$5.8 million for each of the 2017-18 and 2018-19 fiscal years, and \$8.3 million for the 2019-20 fiscal year. Appropriations for the 2019-20 fiscal year included approximately \$2.5 million to serve additional persons from the waiting list<sup>17</sup> and to account for the increased cost to serve each ward.

At the end of our audit period (January 2019), the Department had five full-time staff and four Other Personal Services (OPS) employees<sup>18</sup> dedicated to administering the OPPG's statutory responsibilities. However, subsequent to our audit period, the OPPG experienced significant staff turnover. Specifically, during the period May 3, 2019, through August 6, 2019, three full-time employees, including the OPPG Executive Director and Senior Attorney, as well as three OPS employees, separated from Department employment. **Exhibit B** to this report illustrates the OPPG organizational structure as of August 6, 2019. Between August 2019 and January 2020, the OPPG hired a Senior Attorney in October 2019 and an Executive Director effective December 9, 2019. Additionally, the OPPG hired one full-time employee and one OPS employee and had two full-time employees separate from OPPG employment, leaving three full-time vacancies as of January 2020.

To appropriately address the findings described in this report, it is critical that the Department and the OPPG take steps to ensure adequate resources are in place to promote the effective and efficient administration of OPPG statutory responsibilities.

<sup>17</sup> According to OPPG management, 790 persons were on the waiting list as of March 2020.

<sup>18</sup> Pursuant to Department of Management Services Rule 60L-33.005, Florida Administrative Code, OPS employment is a temporary employer-employee relationship used solely for the completion of short-term or intermittent tasks. OPS employees do not fill established positions.

## Finding 1: Monitoring of Private Professional Guardians

State law<sup>19</sup> specifies that OPPG responsibilities for oversight of professional guardians include developing and implementing a monitoring tool to ensure that professional guardians comply with the standards of practice<sup>20</sup> established by the OPPG. The standards of practice govern the conduct of professional guardians and are designed to ensure that wards receive appropriate care and treatment, are safe, and their assets are protected. Among other things, the standards of practice address:

- The extent of the powers and the limitations of authority granted to the professional guardian by the court and the expectation that the professional guardian's decisions and actions will be consistent with court orders and State law.
- The professional guardian's relationship, interactions, communications, cooperation, and coordination with the ward, family and friends of the ward, and other professionals and providers of services to the ward to ensure that the ward receives appropriate care and treatment.
- Requirements for professional guardians when making decisions on behalf of their wards, such as:
  - Making decisions based on the principle of informed consent by understanding, for example, the risks and benefits of decisions and alternatives and whether a ward has previously stated preferences regarding certain decisions.
  - Assisting and encouraging wards to participate in decisions, when possible.
  - Evaluating ward resources and the alternatives that are available and choosing the decision that best meets the personal and financial goals, needs, and preferences of the ward, while placing the least restrictions on the ward's freedoms, rights, and ability to control their environment.
  - Ensuring that all medical care available to the ward is appropriately provided.
  - Avoiding all conflict of interest and self-dealing.
- Duties and responsibilities of the professional guardian to the ward. For example:
  - Communicating the role of the professional guardian, explaining the rights retained by the ward, assessing the ward's needs, and obtaining the ward's preferences and an inventory of advance directives, including but not limited to, powers of attorney and living wills.
  - Documenting the ward's known values and known wishes regarding medical care and services.
  - Visiting the ward at least quarterly each year and assessing the ward's physical appearance and condition, living situation, and need for existing and additional services.
  - Maintaining communication with service providers, caregivers, and others attending to the ward; examining all services to ensure proper care is being provided to the ward; and advocating on behalf of the ward.
- Duties and responsibilities of the professional guardian for managing the ward's property and keeping the ward's assets safe.
- The termination and limitation of professional guardianship, professional guardianship service fees, and the management of multiple professional guardianship cases.

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<sup>19</sup> Section 744.2001(3)(a), Florida Statutes.

<sup>20</sup> Department Rule 58M-2.009, Florida Administrative Code.

According to OPPG records, during the period July 2017 through January 2019, more than 550 professional guardians were registered by the OPPG to provide guardianship services throughout the State. As previously noted, the OPPG received complaints against 57 guardians, including 47 private professional guardians, during the period July 2017 through January 2019.

As described in Finding 3, we assessed the adequacy of OPPG complaint processing controls. We also reviewed the description of complaints submitted to or resolved by the OPPG during the period July 2017 through January 2019 and noted that complainants reported a variety of serious allegations against both public and private professional guardians registered by the OPPG. The allegations against private professional guardians included:

- Improper actions taken by a trustee, mishandling of ward funds, and exploiting wards financially.
- Violating a living will and disrespecting or ignoring a ward's advanced medical directives and end-of-life wishes.
- Abuse, including physical assault; not providing critical daily needs; and isolating a ward from friends and family.
- Improperly requesting ward accounts be frozen and unnecessarily placing a ward into guardianship.
- Charging wards for services not provided and closing bank accounts and ceasing payments against a ward's wishes.

As evidenced by the number and nature of complaints against private professional guardians, effective monitoring of private professional guardians is necessary to promote compliance with OPPG standards of practice and to ensure that wards receive appropriate care and treatment, are safe, and their assets are protected. However, our audit disclosed that, during the period July 2017 through January 2019, the OPPG did not monitor private professional guardians for compliance with OPPG standards of practice. In response to our audit inquiry, Department management indicated that, due to a lack of resources, the OPPG had neither established policies and procedures for monitoring private professional guardians nor developed and implemented a monitoring tool to confirm private professional guardians complied with OPPG standards of practice.

Absent established monitoring policies and procedures, the development and implementation of a monitoring tool, and the conduct of monitoring to ensure private professional guardians comply with OPPG standards of practice, the risk is increased that wards may not receive appropriate care and treatment, be safely cared for, and have their assets adequately protected.

**Recommendation:** To ensure that wards receive appropriate care and treatment, are safe, and their assets are protected, we recommend that OPPG management establish monitoring policies and procedures, develop and implement a monitoring tool, and conduct monitoring of private professional guardians for compliance with OPPG standards of practice.

## **Finding 2: Monitoring of Public Guardian Offices**

Pursuant to contracts with the Department, PGOs were responsible for the programmatic, fiscal, and operational management of their public guardian program, including the provision of services that protect and exercise the legal rights of incapacitated persons designated as wards of the State, in accordance



with State law and Department rules. The OPPG was to monitor<sup>21</sup> the PGOs for compliance with contractual requirements, including the acceptability of PGO performance and provision of contracted services and deliverables. The OPPG conducted on-site monitoring visits and desk audits to evaluate PGO compliance with administrative, fiscal, and programmatic contract requirements.

During the period July 2017 through January 2019, the OPPG utilized the *Office of Public and Professional Guardians Program Monitoring Tool* (Monitoring Tool) to document the results of on-site monitoring visits and desk audits. The administrative, fiscal, and programmatic contract requirements evaluated during on-site monitoring visits and desk audits included:

- Registration, staffing, insurance, recordkeeping, and reporting requirements.
- Invoice, payroll, petty cash, property and equipment, procurement, and accounting system requirements.
- Ward file, ward visitation, ward property, deceased ward file, and off-site visit requirements.

Within 3 weeks of completing a monitoring engagement and holding an exit conference with the PGO, the OPPG program monitor was to submit a draft final report (Monitoring Tool and formal letter of findings) for supervisory review. The completed monitoring report summarizing the on-site monitoring visit and noted successes, deficiencies, and recommended corrective action plans with deadlines, was to be sent to the PGO within 30 days of the exit conference.

As part of our audit, we examined OPPG records for 3 of the 12 PGO monitoring engagements conducted during the period July 2017 through January 2019<sup>22</sup> and evaluated OPPG monitoring efforts. Our examination disclosed that OPPG efforts to monitor the PGOs were not always adequate to ensure that: OPPG records evidenced that program monitors were free from conflicts of interest, PGO compliance with all State guardianship rules was subject to monitoring, Monitoring Tool responses were supported by and consistent with source documentation, and monitoring reports were appropriately reviewed and timely provided to the PGOs. Specifically, we noted that:

- OPPG program monitors were not required to complete and did not complete conflict of interest statements documenting that they were independent of, and had no conflicts of interest related to, the PGOs they were responsible for monitoring. According to OPPG management, the Department contract manager signed conflict of interest forms on behalf of the OPPG.
- Pursuant to Department contracts with the PGOs, the PGOs were required to comply with all applicable State guardianship registration laws, rules, and regulations. Department rules<sup>23</sup> require that, if a professional guardian hires an employee with assigned fiduciary responsibilities<sup>24</sup> during the guardian's registration period, the guardian is to submit an amended *Professional Guardian Registration Form* (Form) to the OPPG. The Form is to include the new employee's

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<sup>21</sup> Monitoring was to be conducted through direct contact with the PGO by telephone, in writing, or an on-site visit.

<sup>22</sup> The 3 monitoring engagements selected for examination included 2 of the 10 on-site visits and 1 of the 2 desk audits conducted by the OPPG during the period July 2017 through January 2019. Specifically, the 3 monitoring engagements included on-site visits of Aging Solutions and Barry University School of Social Work and a desk audit of LSF Guardianship Services, Inc. (Sarasota).

<sup>23</sup> Department Rule 58M-2.001(12), Florida Administrative Code.

<sup>24</sup> Per Department Rule 58M-2.001(1)(c), Florida Administrative Code, an employee with fiduciary responsibility means an employee of a professional guardian who has the ability to direct any withdrawal or investments from a ward's banking or investment accounts, supervises the care of the ward under the supervision of the guardian, or who makes health care decisions on behalf of the ward.

information and be submitted for approval prior to the employee assuming any fiduciary responsibilities.

We noted that the Monitoring Tool did not require and, consequently OPPG records did not evidence for the 3 selected monitoring engagements, that OPPG program monitors evaluated whether the PGOs had complied with the requirement for the OPPG to approve of new employees with assigned fiduciary responsibilities prior to the employees assuming any such responsibilities.

- The Monitoring Tools for the 3 selected monitoring engagements included responses that were not supported by appropriate records or consistent with the source documentation reviewed by the OPPG. For example:
  - OPPG program monitors utilized *Ward Records Audit Sheets* (Audit Sheets) to review ward files and evaluate whether the PGOs had met certain standards of care for maintaining ward files. For the Barry University School of Social Work (Barry University) on-site monitoring engagement, although the Monitoring Tool indicated that ward file standards of care had been met by Barry University, not all sections of the Audit Sheets used to review and evaluate the ward files were completed. The sections of the Audit Sheets not completed included matters related to:
    - Ward case files and records.
    - The frequency of visits received by the ward and the assessment of the ward's physical appearance and living conditions.
    - Assessments for the ward to receive additional services and the need to continue existing services.
    - The maintenance and sale of the ward's property.

Additionally, not all Audit Sheets were signed by the responsible program monitor.

- Department contracts prohibited the PGOs from carrying a caseload of more than 40 wards per each professional staff member with fiduciary responsibilities except in temporary, extraordinary circumstances. We noted that, while the Monitoring Tool for the Barry University on-site monitoring engagement indicated that Barry University had a 1:30.75 professional guardian staff to ward ratio and had obtained Department approval to exceed the 1:40 ratio, monitoring source documentation indicated that the ratio may have been as high as 1:49.
- State law<sup>25</sup> requires a guardian to file a final report with the court if a ward is deceased. Our examination of files for three deceased wards disclosed that the Monitoring Tool for the Aging Solutions on-site monitoring engagement indicated that the final reports and accountings required to be filed with the court were not applicable. However, the Audit Sheet for one of the three deceased wards indicated that the required final reports and accountings had been filed with the court.
- OPPG records for the Barry University and Aging Solutions on-site monitoring engagements did not evidence that the completed Monitoring Tools and formal letters summarizing the monitoring results were timely provided to the PGOs. Specifically, although neither engagement noted deficiencies, the completed Monitoring Tools and formal letters summarizing the monitoring results were not provided to Barry University and Aging Solutions until 169 and 203 days, respectively, after the engagement exit conferences. Additionally, OPPG records indicated that the Aging Solutions monitoring report was signed by the supervisor 209 days after the monitoring visit occurred and the Barry University report was signed by the supervisor 403 days after the monitoring visit occurred and subsequent to our audit inquiry.

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<sup>25</sup> Section 744.527(1), Florida Statutes.

- OPPG records did not evidence supervisory review of the LSF Guardianship Services, Inc. (Sarasota) desk audit report.

Requiring OPPG program monitors to complete conflict of interest statements documenting that they are independent of, and have no conflicts of interest related to, the PGOs they are responsible for monitoring would provide greater assurance that monitoring activities are conducted in an independent and impartial manner. Additionally, effective monitoring evaluates whether desired outcomes are being achieved and identifies performance problems as early as possible so that corrective action may be timely initiated. Absent a Monitoring Tool that ensures that all State guardianship rules are subject to adequate monitoring and supervisory review controls that ensure monitoring engagement results are timely reviewed, Monitoring Tool responses are supported by and consistent with source documentation, and monitoring reports are timely provided to PGOs, the OPPG cannot demonstrate that monitoring activities were appropriate and performed in accordance with management's expectations and the OPPG can provide only limited assurance that the PGOs performed in accordance with contract terms.

**Recommendation: We recommend that OPPG management:**

- **Require program monitors to document that they are independent of, and have no conflicts of interest related to, the PGOs they are responsible for monitoring.**
- **Enhance the Monitoring Tool to include all State guardianship rules and ensure verification that employees with fiduciary responsibilities are appropriately reported to and approved by the OPPG.**
- **Strengthen supervisory review controls to ensure that monitoring engagement results are timely reviewed, Monitoring Tool responses are supported by and consistent with source documentation, and monitoring reports are timely provided to the PGOs.**

### **Finding 3: Complaint Investigations**

The OPPG established a Statewide toll-free hotline to receive complaints against professional guardians. In addition, complaints can be submitted to the OPPG by e-mail or through the Department's Web site. The OPPG utilized a Complaint Intake Log and the Professional Guardian Complaint Form (complaint form) to document complaints received against professional guardians. Upon receipt, the OPPG was to assign a complaint number and record information about the complaint in the Complaint Intake Log and on the complaint form, such as the date the complaint was received, the complainant's name and contact information, and a description of the complaint. Additionally, the OPPG was to maintain the investigation status of each complaint in the Complaint Intake Log.

The MOU and OPPG policies and procedures<sup>26</sup> required the OPPG to determine whether a complaint was legally sufficient<sup>27</sup> and appropriate for investigation within 3 business days of receiving the complaint. Such complaints were to be referred to the Administrative Coordinator (AC)<sup>28</sup> who was also responsible for reviewing the complaints for legal sufficiency and assigning legally sufficient guardianship complaints

<sup>26</sup> Memo of Understanding between the OPPG and the County Clerks, effective July 14, 2016, and *Statewide Investigation Alliance Policies and Procedures*, dated August 29, 2018.

<sup>27</sup> Section 744.2004(1)(a), Florida Statutes, specifies that a complaint is legally sufficient if it contains ultimate facts that show that a violation of a standard of practice by a professional guardian has occurred.

<sup>28</sup> During the audit period (July 2017 through January 2019), the AC was an employee of the Palm Beach County Clerk.

to the applicable Clerk for investigation. When referring complaints for investigation, the OPPG utilized the complaint form to provide a summary of the complaint details to the AC.

Pursuant to State law,<sup>29</sup> complaint investigations were to be initiated within 10 business days of the OPPG receiving a complaint and the initial investigative findings and recommendations, if any, were to be provided to the professional guardian and the complainant within 60 days of receiving the complaint. Accordingly, OPPG policies and procedures specified that the AC was to submit an Investigative Memorandum, with the initial investigative findings and recommendations, if any, to the OPPG within 60 days of receipt of the complaint. Once an investigation was complete, the AC was to issue within a reasonable time an Investigation Report to the OPPG which was responsible for reviewing the report, evaluating whether any additional information was necessary, and determining whether the report findings warranted disciplinary action. However, if an Investigative Memorandum was not submitted to the OPPG, an Investigation Report was to be submitted to the OPPG within 60 days of the OPPG receiving the complaint.

If disciplinary action was warranted, the OPPG could issue either a Letter of Concern that addressed the laws or rules violated and any recommended increased education or training, or an Administrative Complaint requiring additional education courses, additional monitoring by the OPPG, or suspension or revocation of a guardian's registration, as appropriate. The OPPG was also to notify the complainant of disciplinary actions taken. If no disciplinary action was warranted, the OPPG was to close the complaint and notify the guardian and the complainant of the result.

As part of our audit, we reviewed OPPG policies and procedures and examined OPPG records for 20 of the 32 complaints recorded as closed in the OPPG Complaint Intake Log during the period July 2017 through January 2019 to determine whether the OPPG had established adequate complaint processing controls. Our audit procedures disclosed that OPPG complaint processing controls need improvement to ensure that: complaints are referred and related investigation activities are conducted in accordance with the time frames established in State law, the MOU, OPPG policies and procedures, and OPPG management expectations; investigations include all applicable complaint allegations; and guardians and complainants are timely notified of whether disciplinary action was taken. Specifically:

#### **Timeliness of Complaint Referrals and Related Investigation Activities**

- The OPPG referred 12 of the complaints to the AC 4 to 116 business days (an average of 64 business days) after receiving the complaints. Additionally, the investigations for 11 of these complaints were not initiated within 10 business days of the OPPG receiving the complaint. The investigations for the 11 complaints were initiated from 19 to 110 business days after the OPPG received the complaint. As a result of these various delays, the Investigative Memoranda or Investigation Report, as applicable, for the 12 complaint investigations were not provided to the OPPG within 60 days of receipt of the complaint. Specifically, the Memoranda and one Investigation Report were provided to the OPPG 63 to 228 days (an average of 150 days) after the OPPG received the complaints. The investigations involved allegations against guardians such as:
  - Failing to provide proper medical care to a ward.
  - Submitting false reports to the probate court.

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<sup>29</sup> Section 744.2004(1)(b) and (c), Florida Statutes.

- Mismanaging a ward's finances.
- Placing a ward in a nursing home against the ward's wishes.
- Neglecting a ward by allowing their oxygen tank to empty and leaving the ward sitting in urine and feces-soaked diapers.
- Isolating a ward from family members.
- Allowing the guardian's spouse to sell the ward's personal belongings for personal gain.
- Performing an intentional act that could be expected to result in physical or psychological injury to an elderly person.

In response to our audit inquiry, OPPG management indicated that the 3, 10, and 60-day requirements were not met because previous OPPG management determined the timing of complaint referrals, investigation initiations, and issuance of Investigative Memoranda, and the process for the submission and retention of documents between the OPPG and the AC was still being determined.

### **Completeness of Complaint Investigations**

- The investigation for a complaint alleging, among other things, that a guardian held a ward against their will, did not follow up on this allegation as it was not referred by the OPPG. According to OPPG management, the determination of legal sufficiency and whether to include the allegation in an investigation was made by prior management.
- For 2 complaints referred for investigation that alleged, among other things, that a guardian:
  - Refused to allow a ward to see the doctor and failed to provide medical treatment to the ward,
  - Kept money belonging to a ward,
  - Continued to act as guardian after resigning and retaliated against the ward's family after her resignation,

the OPPG issued a Letter of Concern noting that the complaints were unsubstantiated. However, while certain allegations included in the complaints were investigated, the allegations specified above were not investigated. According to OPPG management, previous OPPG management determined whether complaint allegations were included in an investigation and the complaints may not have been legally sufficient.

- While another complaint was referred to the AC for investigation and the OPPG issued a Letter of Concern noting that the complaint was unsubstantiated, no investigation of the complaint was actually conducted. In response to our audit inquiry, OPPG management indicated that decisions regarding this complaint were made by prior management. The complaint alleged that the guardian had not provided spending money to the ward and that the ward's trust balance was unusually low.
- Another complaint alleging that the guardian mishandled a ward's funds and violated the ward's living will was referred to the AC but was not investigated. According to OPPG management, previous OPPG management referred the complaint to the AC in error and subsequently requested that the complaint not be investigated. However, OPPG management was unable to provide documentation supporting that the complaint referral was made in error.
- During our testing of the 20 selected closed complaints, we noted 16 additional complaints received by the OPPG during the period April 2016 through August 2017 that were not referred to the AC for investigation until February 2019 nor were investigations of these complaints initiated. In response to our audit inquiry, OPPG management indicated that the complaints may not have been legally sufficient, were referred to the AC in error, and previous OPPG management requested that the complaints not be investigated. However, OPPG management

was unable to verify that the complaints were not legally sufficient and had no documentation evidencing the disposition of the complaints. The complaints included allegations such as a guardian not filing survivor benefits after a ward's spouse passed away, banning family from visiting a ward, and not informing family of a ward's death.

### **Complaint Notifications**

- OPPG guidelines<sup>30</sup> required the OPPG to notify the guardian and complainant of disciplinary actions, if any, to be taken upon completion of an investigation. However, the OPPG had not established a time frame for notifying the guardian and complainant. Table 2 summarizes, by disciplinary action taken, the number of days the OPPG took to notify the guardian and complainant of the results of the investigations for the 18 closed complaints examined during our audit that resulted in an investigation. In response to our audit inquiry, OPPG management indicated that State law did not specify a time frame for notifying guardians and complainants of disciplinary actions. Additionally, OPPG management indicated that the timing for sending the notifications to guardians and complainants was determined by previous OPPG management. Notwithstanding these responses, establishing a time frame for timely notifying guardians and complainants of disciplinary actions would promote an effective guardian investigation and complaint resolution process.

**Table 2**  
**Days to Notify Guardians and Complainants of Investigation Results**

Disciplinary Action	Investigations Completed	Number of Days to Notify Guardians	Average Number of Days to Notify Guardians	Number of Days to Notify Complainants	Average Number of Days to Notify Complainants
Letter of Concern	8 <sup>a</sup>	47 - 358	199	90 - 816	520
No Disciplinary Action	7 <sup>b</sup>	6 - 447	160	61 - 447	259
<b>Total</b>	<b><u>15</u></b>				

<sup>a</sup> For 3 additional investigations, a Letter of Concern was sent to the guardian 212 days before the investigation was completed. According to OPPG management, the Letters of Concern may have been dated incorrectly.

<sup>b</sup> For 1 of the 7 investigations, the complainant letter was not dated, and OPPG management could not provide documentation evidencing the date the letter was sent to the complainant.

Source: OPPG records.

We also found that only 1 of the 32 complaints closed during the period July 2017 through January 2019 resulted in an administrative action against a guardian. In this instance, the guardian's registration was revoked in March 2019.

We also examined records for 50 selected complaints that remained open as of January 31, 2019, to determine whether the complaints were timely referred (within 3 business days) to the AC for investigation. Our examination disclosed that the OPPG referred 26 of the complaints to the AC for investigation 1 to 115 business days late (an average of 15 business days late). In response to our audit inquiry, OPPG management indicated that previous OPPG management determined the timing of complaints referred for investigation. We also noted an additional 4 complaints that the OPPG did not refer to the AC for investigation. According to OPPG management, the 4 complaints were not referred for investigation because they were either not legally sufficient or were incomplete. However, the OPPG

<sup>30</sup> OPPG *Investigative Flow Chart*.

could not provide documentation evidencing the basis for the legal insufficiency decisions or to support that the complaints were incomplete.

During our examination of the records for the 20 selected closed complaints and the 50 selected complaints open as of January 31, 2019, we also noted discrepancies between OPPG and AC complaint investigation records and various complaint recordkeeping errors. For example:

- 6 complaints remained open in the Complaint Intake Log, although 11 to 145 business days (an average of 87 business days) had lapsed since the AC had closed the related investigations. In response to our audit inquiry, OPPG management indicated that staffing shortages caused a backlog in updating the status of complaints in the Complaint Intake Log.
- Additionally, due to data entry errors, 5 complaints related to 4 investigations were not included in the Complaint Intake Log but were included in the AC records.
- For 5 complaints, the Complaint Intake Log indicated that the complaints were received on a different date than that recorded on the complaint forms. According to OPPG management, a data entry error was made when recording the date for one complaint in the Complaint Intake Log. For the other 4 complaints, OPPG management indicated that previous management determined how the information was to be entered into the Complaint Intake Log and on the complaint forms and may have used the date the complaint form was completed as the complaint form date rather than the date the complaint was actually received.
- An Investigation Report referenced a complaint number that was not part of the investigation due to a clerical error.

Adequate complaint processing controls would provide greater assurance that complaints are referred and related investigations are conducted in accordance with State law, the MOU, OPPG policies and procedures, and OPPG management expectations; complaint records are complete and accurate; investigations include all applicable complaint allegations; and guardians and complainants are timely notified of whether disciplinary actions are taken.

**Recommendation: We recommend that OPPG management enhance complaint processing controls to ensure that complaints are timely referred for investigation, appropriately documented, and complaint information is accurately recorded. Such control enhancements should also promote the inclusion of all applicable complaint allegations in investigations and the timely notification to guardians and complainants of disciplinary actions.**

#### **Finding 4: OPPG Rules**

Pursuant to State law,<sup>31</sup> the Department was to adopt rules implementing provisions for OPPG complaint, disciplinary proceeding, and enforcement processes. However, we noted that the Department had not adopted rules for:

- Investigating complaints against guardians,
- Communicating the disciplinary process to guardians and complainants, or
- Reporting determined or suspected abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline established by the Department of Children and Families.

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<sup>31</sup> Section 744.2004(6), Florida Statutes.

In response to our audit inquiry, OPPG management could not explain why Department rules only partially implemented the provisions of State law, since the decision to adopt such rules was made by previous management. Additionally, OPPG management indicated that administrative guidance was provided to OPPG personnel through internal processes and procedures while guardians, complainants, and other parties were guided by the rules.

Absent adoption of the required rules, OPPG management and staff, guardians, complainants, and other agencies and individuals may have insufficient direction regarding OPPG complaint, disciplinary proceeding, and enforcement processes. The absence of these rules may have also contributed to certain complaint processing issues noted on audit.

**Recommendation:** To ensure that OPPG management, staff, and other parties are provided authoritative Department direction, we recommend that Department management adopt rules governing complaint, disciplinary proceeding, and enforcement processes.

#### **Finding 5: Payments to County Clerks of the Court**

Pursuant to the MOUs between the Department and the Clerks, the Clerks were responsible for investigating guardianship complaints referred by the OPPG and the Department was required to reimburse the Clerks for the direct costs of investigations, such as personnel and travel costs. The MOUs provided for reimbursements to be made based on staff hours spent on investigations and salary rates specified by position title. The Clerks were to invoice the OPPG monthly for actual labor and investigative costs and, at a minimum, the invoice was to include: (1) the actual time spent investigating the complaint, by investigation case number and investigator; and (2) the salary and benefits hourly rate of the corresponding investigator and supporting documentation from the accounting or payroll system.

We examined records related to ten payments, totaling \$92,259, made by the OPPG to the Clerks during the period July 2017 through January 2019 to determine whether the payments were accurate and properly supported. Our examination disclosed that the ten payments included hourly salary rates that did not agree with the MOU approved rates or were not included in the MOU, and invoiced amounts were not always supported by appropriate documentation such as the Clerks' accounting or payroll records. For example, our review of the investigative hourly rates included in three selected monthly invoices disclosed that 17 of the 18 rates did not agree with the MOU approved rates or were for administrative services not included in the MOU. The amounts billed for these months totaled \$717.40, while the amount to be billed based on the MOU totaled \$692.58, a difference of \$24.82 (4 percent). Our examination also disclosed that the invoices submitted to the OPPG for reimbursement classified salary rates by employee rather than position title, which may have contributed to the issues noted on audit.

In response to our audit inquiry, OPPG management indicated that the Clerks' approved hourly salary rates had changed and that the OPPG documented the changes through the invoices rather than by revising the MOUs. Notwithstanding, absent documentation that payments to the Clerks for the direct costs of investigations are made in accordance with MOU agreed-upon salary rates and are adequately supported, the OPPG cannot demonstrate the propriety of such payments.

**Recommendation:** We recommend that, prior to reimbursing Clerks for the direct costs of complaint investigations, OPPG management ensure that invoiced amounts are adequately supported and agree with the salary rates established by the MOUs.



## Finding 6: Annual Renewal Registration

The OPPG registers professional guardians on an annual basis and, pursuant to Department rules,<sup>32</sup> professional guardians are to submit a completed *Professional Guardian Registration Form* (Form) to the OPPG at least 30 days prior to the expiration date of their current registration to ensure that a lapse in registration does not occur. The OPPG maintains a public Web site that includes a current listing of all registered professional guardians and identifies guardians without a valid registration. Guardians are assigned and overseen by the court and, consequently, it is important that the court is timely notified of any changes to a guardian's registration status.

As part of our audit, we evaluated the adequacy of OPPG professional guardian registration processes and examined OPPG records for 25 of the 735 annual renewal registrations made during the period July 2017 through January 2019. Our audit procedures disclosed that:

- The OPPG did not send registration expiration reminder notices to guardians until 30 days prior to the expiration of the guardian's registration. Our examination of OPPG records disclosed that the Forms for 21 of the 25 annual renewal registrations were received 4 to 576 days (an average of 62 days) after the Forms were due to the OPPG. Additionally, 15 of the 25 registrations lapsed for periods ranging from 2 to 611 days (an average of 66 days).
- The OPPG notified court personnel only after a guardian's registration had lapsed for more than 90 days.
- The OPPG had not established renewal registration policies and procedures, which may have contributed to the issues noted on audit.

Absent established policies and procedures to promote the timely submission of annual renewal registrations and the timely notification of lapses in guardian registration to the courts responsible for appointing guardians, OPPG management cannot ensure that wards receive services only from registered guardians and in accordance with the intent of the State's guardian program.

**Recommendation: We recommend that OPPG management establish renewal registration policies and procedures, including procedures for providing expiration notices to professional guardians prior to the date the registration is due to the OPPG. We also recommend that OPPG management establish policies and procedures to ensure that lapses in guardian registrations are timely communicated to court personnel responsible for appointing guardians.**

### SELECTED ADMINISTRATIVE ACTIVITIES

As part of our audit, we evaluated selected Department administrative activities and controls, including those related to the assignment and use of mobile devices<sup>33</sup> and Florida Accounting Information Resource Subsystem (FLAIR) access privileges.

<sup>32</sup> Department Rule 58M-2.001(11), Florida Administrative Code.

<sup>33</sup> Mobile devices are portable devices, such as laptop computers, smartphones, and tablets, that allow storage and transmittal of entity data.

## Finding 7: Mobile Device Security Controls

Security controls are intended to protect the confidentiality, integrity, and availability of data and information technology (IT) resources. Our audit procedures disclosed that certain security controls related to mobile device utilization need improvement. We are not disclosing specific details of the issues in this report to avoid the possibility of compromising Department data and IT resources. However, we have notified appropriate Department management of the specific issues.

Without appropriate security controls related to the use of mobile devices by Department employees, the risk is increased that the confidentiality, integrity, and availability of Department data and IT resources may be compromised.

**Recommendation:** We recommend that Department management enhance certain security controls related to employee use of mobile devices to ensure the confidentiality, integrity, and availability of Department data and related IT resources.

## Finding 8: FLAIR Access Controls

Agency for State Technology (AST)<sup>34</sup> rules<sup>35</sup> required State agencies to review access privileges periodically based on system categorization or assessed risk, ensure that users are granted access to agency IT resources based on the principles of least privilege and a need to know determination, and ensure that IT access privileges are removed when access to an IT resource is no longer required. Effective access controls also include measures that restrict user access privileges to data and IT resources to only those functions that promote an appropriate separation of duties and are necessary for the user's assigned job duties.

The Department utilizes FLAIR to authorize the payment of Department obligations and to record and report financial transactions. Controls over employee access to FLAIR are necessary to help prevent and detect any improper or unauthorized use of FLAIR access.

In our report No. 2015-109 (finding No. 12), we noted that Department controls over employee access to FLAIR needed improvement. As part of our follow-up audit procedures, we evaluated user access privilege controls for FLAIR and examined FLAIR access records for 49 FLAIR user accounts (assigned to 44 Department employees) that were active at some point during the period July 2017 through January 2019. Our audit procedures disclosed that:

- The Department had not established policies and procedures for periodically reviewing FLAIR user access privileges. Consequently, the Department only performed one review of the appropriateness of FLAIR user access privileges during the period July 2017 through January 2019 (in June 2018). According to Department management, in lieu of periodic reviews to ensure that FLAIR user access privileges were authorized and remained appropriate, the

<sup>34</sup> Effective July 1, 2019, Chapter 2019-118, Laws of Florida, created the Division of State Technology (DST) within the Department of Management Services (DMS) and transferred the existing powers, duties, functions, personnel, records, property, and funds of the AST to the Division of State Technology. Effective July 1, 2020, the DST was abolished, and the Florida Digital Service was established in its place.

<sup>35</sup> AST Rule 74-2.003(1)(a) and (1)(d)3., Florida Administrative Code. Effective July 1, 2019, AST Rules, Chapter 74-2, Florida Administrative Code, were transferred to DMS Rules, Chapter 60GG-2, Florida Administrative Code. AST Rules, Chapter 74-2, Florida Administrative Code, were in effect during our audit period (July 2017 through January 2019).

Department relied on weekly reviews of personnel action requests to: provide access for new employees; change access, as needed, for employee promotions, reassignments, and transfers; and to remove access upon a user's separation from Department employment. Notwithstanding, these reviews did not adequately ensure the ongoing appropriateness of active users' FLAIR access privileges as employee job duties may change outside of a formal personnel action.

- Employees performing financial management functions had been granted update capabilities to incompatible functions in FLAIR. Specifically, we noted that:
  - 2 user accounts had update capabilities to both the disbursement and cash receipts functions.
  - 1 user account had update capabilities to both the disbursement and vendor update functions.
  - 2 user accounts had update capabilities to both the fixed assets accounting and fixed assets custodial functions.
- FLAIR user access privileges were not always timely removed upon a user's separation from Department employment. Specifically, our examination of FLAIR access records for the ten FLAIR user accounts associated with ten employees who separated from Department employment during the period July 2017 through January 2019 disclosed that 6 of the FLAIR user accounts remained active 2 to 34 business days (an average of 20 business days) after the employees' separation dates.

Although we requested, Department management was unable to provide explanations for the issues noted on audit. Periodic reviews of FLAIR user access privileges would provide Department management assurance that user access privileges are authorized and remain appropriate. Additionally, the effective separation of incompatible financial management duties and prompt removal of FLAIR user access privileges upon an employee's separation from Department employment reduces the risk of unauthorized disclosure, modification, or destruction of Department data.

**Recommendation:** We recommend that Department management establish policies and procedures for conducting periodic reviews of the appropriateness of FLAIR user access privileges. Also, we again recommend that Department management limit user access privileges to FLAIR to promote an appropriate separation of duties and require that, where incompatible access privileges are necessary, compensating controls are established and documented. Department management should also ensure that FLAIR access privileges are removed immediately upon a user's separation from Department employment.

## ***PRIOR AUDIT FOLLOW-UP***

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Except as discussed in the preceding paragraphs, the Department had taken corrective actions for the applicable findings included in our report No. 2015-109.

## ***OBJECTIVES, SCOPE, AND METHODOLOGY***

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The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from February 2019 through June 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit

to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the Department of Elder Affairs (Department) focused on the Office of Public and Professional Guardians (OPPG). The overall objectives of the audit were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

Our audit also included steps to determine whether management had corrected, or was in the process of correcting, all applicable deficiencies noted in our report No. 2015-109 (finding Nos. 1 through 8 and 11 through 13).

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, Department policies and procedures, and other guidelines, and interviewed Department personnel to obtain an understanding of OPPG operations.
- From the population of 112 initial professional guardian registrations issued during the period July 2017 through January 2019, examined 11 selected initial registration applications to determine whether professional guardians met the registration criteria established in Department Rules, Chapter 58M-2, Florida Administrative Code.
- From the population of 735 annual professional guardian renewal registrations processed during the period July 2017 through January 2019, examined 25 selected annual renewal registration applications to determine whether professional guardians met the registration criteria established in Department Rules, Chapter 58M-2, Florida Administrative Code.
- Examined OPPG records for 3 of the 12 public guardian office monitoring engagements conducted by the OPPG during the period July 2017 through January 2019 to determine whether the OPPG adequately monitored the public guardian offices in accordance with contract requirements, OPPG requirements, and other guidelines.
- From the population of 209 complaints (177 open complaints and 32 closed complaints) recorded in the Complaint Intake Log during the period July 2017 through January 2019, examined 14 selected complaints (10 open and 4 closed) to determine whether complaint information was timely and accurately recorded in the OPPG's Complaint Intake Log.
- From the population of 56 payments, totaling \$259,998, made by the OPPG to County Clerks of the Court during the period July 2017 through January 2019, examined records for 10 selected payments, totaling \$92,259, to determine whether OPPG payments to the Clerks for the direct costs of complaint investigations were accurate and properly supported.
- From the population of 32 closed complaints and 177 open complaints recorded in the Complaint Intake Log during the period July 2017 through January 2019, examined 20 selected closed complaints and 50 selected open complaints to determine whether OPPG complaint processing controls were adequate to ensure that complaints are referred and related investigation activities are conducted in accordance with the time frames established in State law, OPPG policies and procedures and other guidelines, and OPPG management expectations; investigations include all applicable complaint allegations; and guardians and complainants are timely notified of whether disciplinary action was taken.
- Examined Department administrative rules to determine whether the rules implemented provisions for OPPG complaint, disciplinary proceeding, and enforcement processes in accordance with State law.
- Examined Department records for the one Administrative Complaint and 16 Letters of Concern issued during the period July 2017 through January 2019 to determine whether OPPG took appropriate disciplinary actions against guardians in accordance with OPPG Disciplinary Guidelines.
- Evaluated Department actions to correct finding Nos. 1 through 8 and 11 through 13 noted in our report No. 2015-109. Specifically, we:
  - Reviewed applicable laws, rules, Department policies and procedures, and other guidelines, and interviewed Department personnel to obtain an understanding of State Long-Term Care Ombudsman Program (SLTCOP) operations.
  - Performed inquiries, observations, inspections of selected documents and records, and analyzed Long-Term Care Ombudsman Program (LTCOP) system data for the 3,620 complaints received during the period July 2017 through January 2019 to determine whether complaints were timely responded to, investigated, and resolved.

- From the population of 22 SLTCOP employees and 126 volunteer ombudsmen who were hired and began investigating complaints during the period July 2017 through January 2019, examined Department records for 3 selected SLTCOP employees and 13 selected volunteer ombudsmen to determine whether the employees and volunteer ombudsmen had completed required training and received appropriate background screenings prior to conducting investigations.
- From the population of 59 SLTCOP employees and 356 volunteer ombudsmen who investigated complaints during the period July 2017 through January 2019, examined Department records for 4 selected SLTCOP employees and 15 selected volunteer ombudsmen to determine whether the employees and volunteer ombudsmen had completed 10 hours of continuing education annually.
- From the population of 356 volunteer ombudsmen who investigated complaints during the period July 2017 through January 2019, examined Department records for 25 selected volunteer ombudsmen to determine whether volunteer ombudsmen had received appropriate background screenings every 5 years.
- From the population of 1,932 SLTCOP complaints closed during the period July 2017 through January 2019, examined Department records for 40 selected complaints to determine whether complaints were timely responded to, investigated, and resolved, and related investigation files were adequately documented.
- Reviewed the SLTCOP Annual Report for the 2017-18 Federal fiscal year to determine whether the report included all information specified by Federal and State requirements, and whether the reported information was accurate and properly supported by SLTCOP records.
- Selected and examined two of the six SLTCOP Quarterly Reports completed during the period July 2017 through January 2019 to determine whether the reports were timely prepared and the reported information was properly supported by SLTCOP complaint data.
- From the population of 4,396 travel expenditure transactions, totaling \$258,957, made during the period July 2017 through January 2019, examined records for 25 selected travel expenditure transactions, totaling \$21,532, to determine whether the expenditures were appropriately documented, made for authorized purposes, and complied with State laws, rules, and other guidelines.
- Reviewed Department procedures to determine whether password settings were appropriate.
- Inquired of Department personnel to determine whether periodic monitoring of FLAIR user access privileges was conducted and documented.
- Analyzed Department records for all Department employees with FLAIR user accounts active during the period July 2017 through January 2019 to determine whether any employees were granted update capabilities to incompatible FLAIR functions.
- Examined Department records for the ten Department employees with FLAIR update capabilities who separated from Department employment during the period July 2017 through January 2019 to determine whether FLAIR user access privileges were timely removed upon employment separation.
- Reviewed Department policies and procedures and examined selected Department forms to determine whether the Department complied with applicable statutory requirements for collecting and utilizing individuals' social security numbers.
- Observed, documented, and evaluated the effectiveness of selected Department processes and procedures for the assignment and use of mobile devices with related costs totaling \$165,454 during the 2017-18 fiscal year.

- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

## ***AUTHORITY***

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Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

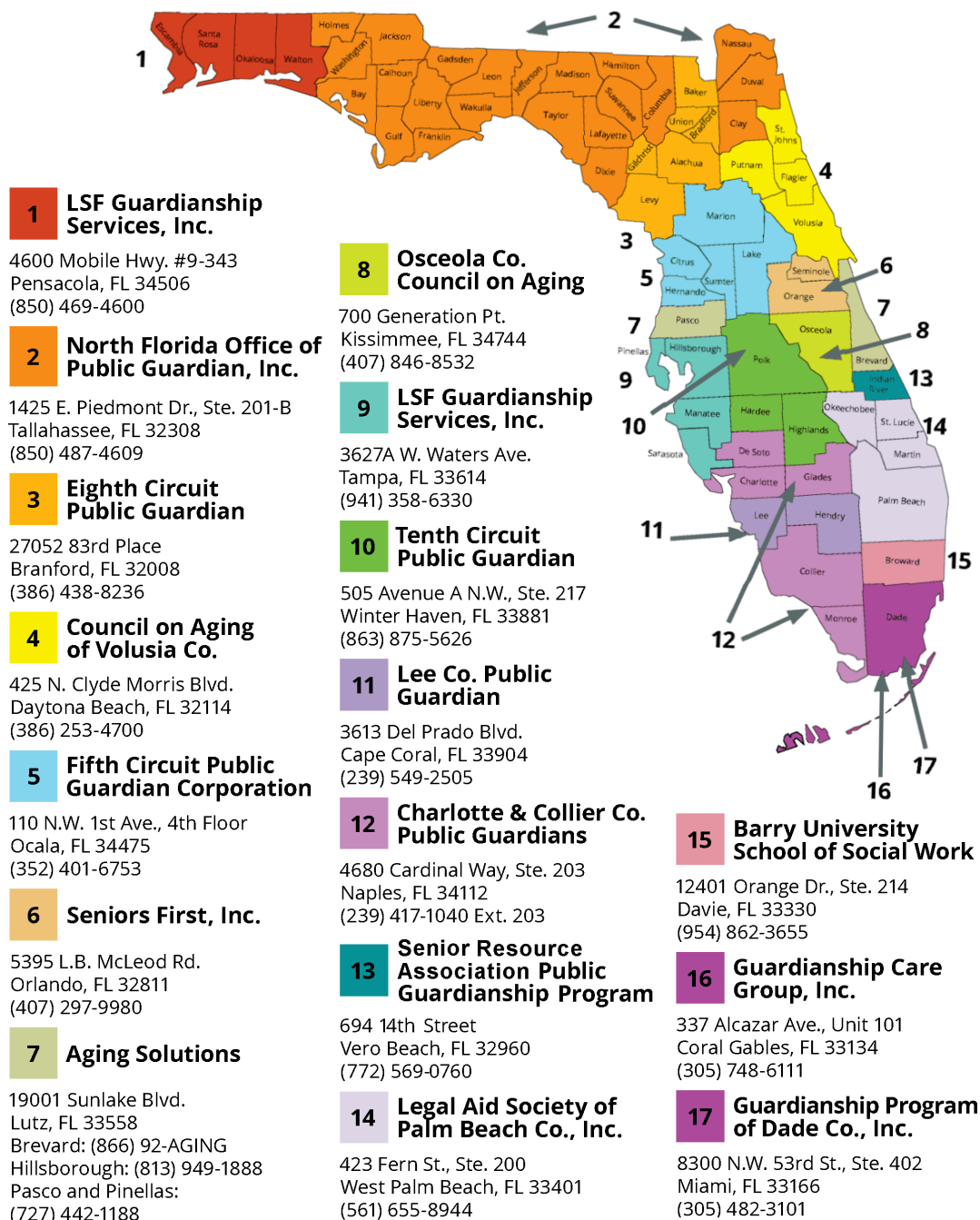
A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is fluid and cursive, with the first name "Sherrill" being more prominent than the last name "Norman".

Sherrill F. Norman, CPA  
Auditor General

## EXHIBIT A

### PUBLIC GUARDIAN OFFICES

AS OF NOVEMBER 21, 2019



County coloring represents area served by the corresponding office location.

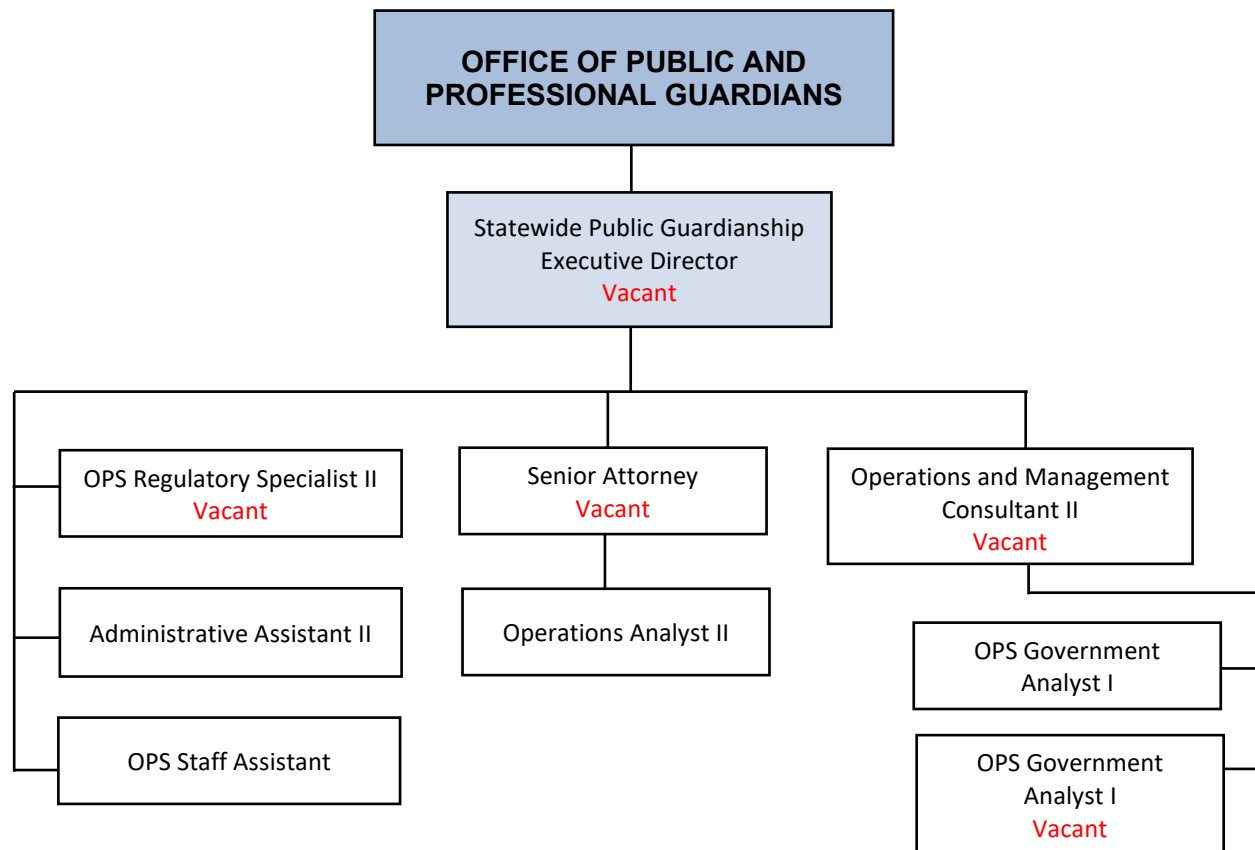
Source: OPPG and Department records.



## EXHIBIT B

### OFFICE OF PUBLIC AND PROFESSIONAL GUARDIANS ORGANIZATIONAL CHART

AS OF AUGUST 6, 2019



Source: Department records.

## MANAGEMENT'S RESPONSE

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Ron DeSantis  
Governor

Richard Prudom  
Secretary

August 20, 2020

Sherrill F. Norman, Auditor General  
Office of the Auditor General  
Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

Pursuant to Section 11.45(4)(d), Florida Statutes, this is our response to your report, *Department of Elder Affairs, Office of Public and Professional Guardians and Selected Administrative Activities*. Our response to the Department's recommendations corresponds with the order of your findings and recommendations.

If further information is needed concerning our response, please contact Taroub J. Faraj, Inspector General, or Kimberly Jones, Audit Director, at 414-2000.

Sincerely,

Richard Prudom  
Secretary

RP/TJF/kj

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Department of Elder Affairs' Response to Auditor General Preliminary and Tentative Report,  
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Administrative Activities*

**Finding 1:** Contrary to State law, the OPPG did not establish policies and procedures for monitoring private professional guardians, develop or implement a monitoring tool, or monitor private professional guardians for compliance with OPPG standards of practice governing the conduct of professional guardians.

**Recommendation:** To ensure that wards receive appropriate care and treatment, are safe, and their assets are protected, OPPG management establish monitoring policies and procedures, develop and implement a monitoring tool, and conduct monitoring of private professional guardians for compliance with OPPG standards of practice.

**Agency response:** Recommendation Accepted. OPPG management is currently in the research and planning phases of implementing monitoring policies and procedures for the private professional guardian segment in addition to implementing a monitoring tool that would include forms and a database system to house data in parallel to the public guardian monitoring. A proposal and specifications are being developed with a vendor to produce a system database for the Department to have an efficient way to monitor and have oversight of the private professional guardians. Within the FY 2020-2021 budget, an allocation of \$500,000 as non-recurring funds has been set aside to research and implement the monitoring tool for private professional guardians for compliance with OPPG standards of practice.

**Finding 2:** OPPG efforts to monitor Public Guardian Offices (PGOs) were not always adequate to ensure that: OPPG records evidenced that program monitors were free from conflicts of interest, all State guardianship rules were subject to adequate monitoring, Monitoring Tool responses were supported by and consistent with source documentation, and monitoring reports were appropriately reviewed and timely provided to PGOs.

**Recommendation:** OPPG management:

- Require program monitors to document that they are independent of, and have no conflicts of interest related to, the PGOs they are responsible for monitoring.
- Enhance the Monitoring Tool to include all State guardianship rules and ensure verification that employees with fiduciary responsibilities are appropriately reported to and approved by the OPPG.
- Strengthen supervisory review controls to ensure that monitoring engagement results are timely reviewed, Monitoring Tool responses are supported by and consistent with source documentation, and monitoring reports are timely provided to the PGOs.

**Agency response:** Recommendation Accepted. Effective April 2020, the OPPG Executive Director developed an exhaustive office staff policy and procedure manual for the public guardian monitor job function. There has also been a review of current monitoring forms and tools used for monitoring of the PGOs. These forms have been updated to align with requirements

Department of Elder Affairs' Response to Auditor General Preliminary and Tentative Report,  
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detailed in the contract with the Department, the PGOs, and the appropriate Florida statutes. The monitoring staff and the Executive Director currently have completed "Department of Elder Affairs Conflict of Interest Questionnaire" forms for each PGO.

Effective August 2020, the OPPG is conducting a trial run of a newly developed "virtual monitoring" model in light of travel and visitation bans due to COVID-19. This "virtual monitoring" model will allow the OPPG to ensure that PGOs remain in compliance with the Department's contractual agreement, this includes PGOs registration of fiduciary employees. In the virtual monitoring model, the OPPG will continue to use the monitoring tool that is currently in place for the PGOs without having to physically travel to locations across the state. Adjustments are being made to ensure large documents can be shared in accordance with Department and State practices and security. This monitoring will allow for compliance with all State guardianship rules and ensuring verification that employees with fiduciary responsibilities are appropriately reported to and approved by the OPPG.

The Executive Director is engaged in the overall monitoring process and the implementation of process mapping and documents to ensure that monitoring results are timely reviewed, monitoring tool responses are supported by and consistent with source documentation, and monitoring reports are timely provided to the PGOs.

**Finding 3:** OPPG complaint processing controls need improvement to ensure that: complaints are referred and related investigation activities are conducted in accordance with State law, OPPG policies and procedures, other guidelines, and management expectations; investigations include all applicable complaint allegations; and guardians and complainants are timely notified of whether disciplinary actions are taken.

**Recommendation:** OPPG management enhance complaint processing controls to ensure that complaints are timely referred for investigation, appropriately documented, and complaint information is accurately recorded. Such control enhancements should also promote the inclusion of all applicable complaint allegations in investigations and the timely notification to guardians and complainants of disciplinary actions.

**Agency response:** Recommendation Accepted. Effective March 2020, the Executive Director developed an exhaustive office staff policy and procedure manual for the complaint intake job function to ensure complaints are documented, recorded, and tracked appropriately and accurately. The manual sets standards for methods to ensure complaint files are maintained for future auditing and investigation needs including preservation of communication with complainants, documents received from complainants, communication with guardians and discipline of guardians. In addition, the Executive Director has implemented the following complaint policies and procedures:

Department of Elder Affairs' Response to Auditor General Preliminary and Tentative Report,  
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- Documentation and tracking of all complaints and complaint related inquiries that come into the OPPG complaint toll-free hotline.
- Notification to guardian registration staff to appropriately document when guardian discipline is related to the guardian education requirement or renewal of registration.
- Internal monthly audit process by non-complaint intake personnel to ensure that the documentation and tracking above is done effectively.
- Process documentation and tracking for guardian discipline to ensure compliance.

**Finding 4:** Contrary to State law, the Department had not adopted rules for certain OPPG processes, including the process for investigating complaints.

**Recommendation:** To ensure that OPPG management, staff, and other parties are provided authoritative Department direction, Department management adopt rules governing complaint, disciplinary proceeding, and enforcement processes.

**Agency response:** Recommendation accepted. The OPPG will work with DOEA General Counsel office to develop OPPG rules. While the OPPG acknowledges there are legislative rules or processes defined in the Administrative Code Chapter 58M-2 governing complaints and investigations, the OPPG did communicate to the Auditor General that they do in fact have a MOU with the Statewide Clerks Alliance and internal processes and procedures that are detailed in the complaint intake staff manual that governs following:

- Investigating complaints against guardians;
- Communicating the disciplinary process to guardians and complainants; and
- Reporting determined or suspected abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline established by the Department of Children and Families.

**Finding 5:** OPPG controls need enhancement to ensure that, prior to reimbursing Clerks of the Court for the direct costs of guardianship complaint investigations, invoiced amounts are adequately supported and agree with established rates.

**Recommendation:** Prior to reimbursing Clerks for the direct costs of complaint investigations, OPPG management ensure that invoiced amounts are adequately supported and agree with the salary rates established by the MOUs.

**Agency response:** Recommendation Accepted. Effective March 2020, the Executive Director has implemented a two-person review of County Clerks of Court invoices for complaint investigation work prior to submission for payment. This process includes verification of dollar amounts, time spent on individual investigations, time study of time spent, and ensuring

compliance with MOUs.

**Finding 6:** OPPG controls did not adequately promote the timely submittal of annual professional guardian renewal registrations or ensure that the courts responsible for appointing guardians were timely notified of lapses in guardian registration.

**Recommendation:** OPPG management establish renewal registration policies and procedures, including procedures for providing expiration notices to professional guardians prior to the date the registration is due to the OPPG. Also, OPPG management establish policies and procedures to ensure that lapses in guardian registrations are timely communicated to court personnel responsible for appointing guardians.

**Agency response:** Recommendation Accepted. Effective March 2020, the Executive Director developed an exhaustive office staff policy and procedure manual for the guardian registrar job function. The manual provides guidance on handling notifications to professional guardians regarding renewals and handling untimely renewals of registrations. Specifically, regarding timely renewal and expiration notifications, the Executive Director has implemented the following registration policies and procedures:

- Professional guardians are notified via email communication 30-45 days prior to registration expiration with details of all necessary components needed for the guardian and fiduciary staff to be in compliance and assist with timely registration. The email will include, as an attachment, the appropriate registration forms and a Registration Infographic for visual learners.
- Professional guardians that may submit registration or renewal registration documents that are incomplete or missing necessary component are notified via email communication within 1-2 day of OPPG receiving documents. If OPPG does not receive required documents, staff will notify professional guardians via email communication or phone call every 8-10 days.
- Professional guardians are notified after 10 days of registration expiration if no attempt to renew registration is made.
  - In working with the General Counsel office, the OPPG has developed communication for professional guardians that fail to timely renew registration. This communication is a signed letter sent via mail or email to the professional guardian and in some circumstances, Chief Judges and Clerks of the Court will be notified of the untimely renewal.

**Finding 7:** Security controls over mobile device utilization need improvement to ensure the

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confidentiality, integrity, and availability of Department data and information technology resources.

**Recommendation:** Department management enhance certain security controls related to employee use of mobile devices to ensure the confidentiality, integrity, and availability of Department data and related IT resources.

**Agency response:** The Bureau of Information Technology (BIT) acknowledges the preliminary and tentative audit finding, related to mobile device security controls. BIT will work in collaboration with Department leadership to review and align policies and procedures with the Department's mission, business needs, and the AG's recommendations. In consideration of alternate work accommodations due to the coronavirus pandemic, a tentative target date of December 31, 2020 will be set for finalization and approval of the policies and procedures. The remaining AG recommendations, related to mobile device security controls, will be evaluated collaboratively by Department leadership and BIT to determine where operational changes may be made to enhance certain security controls while still supporting the Department's mission and business needs. Implementation of operational changes that may be approved will likely be a protracted endeavor as additional funding may be required. Due to the potential of needing additional funds, implementation of approved changes may be delayed until Fiscal Year 2020-2021 or Fiscal Year 2021-2022 to account for state legislative and budgetary cycles.

**Finding 8:** Department controls over employee access to the Florida Accounting Information Resource Subsystem continue to need improvement to reduce the risk of unauthorized disclosure, modification, or destruction of Department data.

**Recommendation:** Department management establish policies and procedures for conducting periodic reviews of the appropriateness of FLAIR user access privileges. Also, Department management limit user access privileges to FLAIR to promote an appropriate separation of duties and require that, where incompatible access privileges are necessary, compensating controls are established and documented. Department management should also ensure that FLAIR access privileges are removed immediately upon a user's separation from Department employment.

**Agency response:** The Division of Financial & Support Services acknowledges the preliminary and tentative audit finding related to FLAIR Access Controls. The Division has written procedures for FLAIR Access, dated 8/10/2020. Effective immediately, DOEA will utilize this procedure to ensure that access to FLAIR is reviewed periodically, provide documentation when an employee requires access to FLAIR as well as termination of access to FLAIR. In addition, as employees are reassigned duties within the Department, documentation will be maintained to support required updates to privileges.

