Florida State Guardianship Association

VOLUME 5-2

FSGA BULLETIN

FSGA 35th ANNUAL CONFERENCE

LEGISLATIVE UPDATE

FSGA Mission Statement - The Florida State Guardianship Association is dedicated to the protection of the dignity and rights of incapacitated persons and to increasing the professionalism of guardianship through education, networking and legislative action.

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Please join the Florida State Guardianship Association as an exhibitor or sponsor, July 21-22, 2022 at the Hyatt Regency Sarasota. Our annual event will help strengthen your business and link you with prominent professionals in the field. Hundreds of guardians, attorneys, trustees, healthcare professionals, and court personnel are in attendance. Each year our conferees traverse the state to come together for continuing education and to learn about the innovative products and solutions in the field of guardianship, conservatorship, case management, healthcare and more. As Sponsors and Exhibitors your exposure is an essential part of the education and networking program in Sarasota.

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FSGA SUCCEEDS HAVING OUR VOICES HEARD IN TALLAHASSEE!

The 2022 Florida Legislative Session started on January 11 and wrapped up on March 14. FSGA was especially busy throughout expending many hours in contact with dozens of legislators and their staffs, and holding video conference meetings directly with Senators and Representatives, as well as with senior Legislative staff.

The key issue directly connected to guardianship and guardians was **HB 1349** and titled as **Guardianship Data Transparency**. The sponsors were Rep. Linda Chaney from Pinellas County, and Senator Jennifer Bradley from Orange Park.

The topic of having statewide data-collection specifically regarding guardianship has been discussed for some time over the years, but in particular promoted extensively in recent months by the Florida Clerks Association. The first drafts of the legislation, both HB 1349 & SB 1710, were not well-written in general, definitely overly and unnecessarily expansive and/or thoroughly open-ended. Privacy matters were not being addressed for the very persons involved first and foremost, nor for even the safety considerations of guardians.

Early on FSGA made it clear that the association was not at all opposed to data-collection per se, but that concerns existed nonetheless as to how the legislation was written. Thankfully after many discussions, FSGA succeeded being heard and re-shaping the legislation. Many concerns were indeed addressed, and certainly a much improved draft was achieved that should serve all Floridians better. Various areas warrant further discussion going forward, though overall FSGA can support the legislation as enacted.

FOLLOWING ARE BRIEF SALIENT POINTS OF THE FINAL VERSION AS PASSED BY THE LEGISLATURE

SECTION 1:

→ The Clerks of Court shall establish a statewide database of guardian and guardianship case information;
→ The database must include, at a minimum, the following:
(a) The registration status of each professional guardian.
(b) The substantiated disciplinary history of each professional guardian.
(c) The status of each guardian's compliance with the statutory qualifications for guardianship under s. 744.2003 or s. 744.3145.
(d) The status of statutorily required reports and submissions under chapter 744.
[Initial legislative drafts were incredibly invasive and without need.]
→ Subsection (2) generally restricts and limits access to the information in the database, primarily specifies the judiciary and certain court personnel as authorized.
[Initial drafts never provided restrictions on access or for security.]
→ Database is to be searchable internally by various fields, examples such as the name of the petitioner, ward, guardian (*not specific to professional guardians so should include family guardians*), and legal counsel for all parties, and the name of the judge.
→ Certain information will be made public on a Clerks' webpage; including information on professional guardians.
[Initial drafts were open-ended, now limited and specified.]
→ Provides for statistical reports to be generated at certain intervals during the year and/or at the request of the Judiciary or Legislature.
[Now specifies criteria and not open-ended, and now protects privacy of the wards unlike the initial versions.]
→ Provides for oversight not included in earlier drafts, by an arm of the Legislature (OPPAGA), as suggested by FSGA months ago, and also involves the State Courts Administrator (under the Florida Supreme Court).

SECTION 2:

→ Requires that OPPG by July 2023 publish on its website additional information on professional guardians to include –
1. The guardian's name and business address.
2. Whether the guardian meets the education and bonding requirements under s. 744.2003.
3. The number and type of substantiated complaints against the guardian.
4. Any disciplinary actions taken by the Department of Elderly Affairs against the guardian.

[Initial drafts were open-ended and needlessly invasive, now limited and specified.]

CLICK HERE FOR FSGA's POSITION PAPER ON HB 1349 & SB 1710 AS INITIALLY DRAFTED:

CLICK HERE FOR THE FULL VERSION OF THE LEGISLATION HB 1349 AS PASSED:

Additional bills were followed closely by FSGA. One noted in our previous newsletter was SB 1032, the "Florida Guardianship Jurisdiction Act". In essence this is the "Uniform Guardianship Act" (UAGPPA) applying across state lines. This was a priority of the Elder Law Section of the Florida Bar. However, the RPPTL Section was in disagreement and therefore opposed. SB 1032 (or HB 845), was never scheduled in the House and consequently failed.

For the second year in a row, a "Supported Decisionmaking for Adults with Disabilities" bill, or SDM, was introduced and again a priority for Disability Rights Florida. The legislation received only one committee hearing and ultimately also failed.

Two bills of particular interest did pass and that guardians should note

SB 988, In-person Visitation, which is also titled as "**No Patient Left Alone Act**". It is expected to be signed by the Governor soon and become effective immediately upon his signature.

→ It will require all facilities to develop policies and procedures regarding visitations, to abide by certain criteria in their development, and to make this information easily accessible from the homepage of their websites.

→ Specifies that policies and procedures may not be more stringent than safety protocols established for the provider's staff and may not require visitors to submit proof of any vaccination or immunization. They must also allow visitors to physically touch the resident or client, unless the resident or client objects.

→ Further, it provides that a resident, client, or patient may designate a visitor who is a family member, friend, guardian, or other individual as an essential caregiver, and that the provider must allow in-person visitation by the essential caregiver for at least 2 hours daily in addition to any other visitation authorized

CLICK HERE FOR THE FULL VERSION OF THE LEGISLATION SB 988 AS PASSED:

HB 1239, Nursing Homes, makes several changes to Florida statutes related to nursing home staffing and has been fairly controversial. Advocated for by the Florida Health Care Association (FHCA) representing nursing homes throughout the state. AARP valiantly opposed throughout and continues working having the legislation vetoed by the Governor.

→ The bill modifies the definition of "resident care plan" and defines the terms "direct care staff" and "facility assessment."

→ The bill allows the currently required 3.6 hours of direct care to be met with direct care staff rather than requiring it be met by certified nursing assistant (CNA) and nurse staffing.

→ The bill also reduces the requirement that a nursing home provide a minimum of 2.5 hours of CNA staffing per resident per day to 2.0 hours of staffing per resident per day.

CLICK HERE FOR THE FULL VERSION OF THE LEGISLATION HB 1239 AS PASSED

FSGA
Florida State Guardianship Association

THANK YOU
FOR BEING A MEMBER OF FSGA!

Your participation is important and helps demonstrate our shared commitment to excellence in guardianship.

If not an FSGA member already, we certainly welcome you! FSGA has been a leader since 1983 working for the betterment of the practice of guardianship.

It would be terrific if you renewed your membership, or joined, today!

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- **Access to an exclusive newly formed Ethics Committee**
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- **Legislative Advocacy & Communications**
  - Needed now more than ever
  - Engaging with policy-makers and media
  - Receive important information

Your involvement is welcomed and much needed! Please renew/ join at your earliest!

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Please visit FSGA's new video library of one-hour courses approved for guardian CEU.

If you want to enjoy a focused area of study, or are in a need of a CEU or two peruse our titles some of which are:

- ***Professional Guardians' Interactions with Family, Friends and Interested Persons - Glenn Krasny***
- ***Conflict of Interest - Lance Mc Kinney, Esq.***
- ***Restoration of Rights – Enrique Zamora, Esq.***
- ***Fiduciary Duty - David Mangiero, Esq. and Mark Vernick***

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Thank You

For all who attended the Ethics Symposium

Especially thanking our sponsors **Savannah Court**, **Hibiscus Court** and **Savannah Grand** and **Williams Professional Group** and our wonderful speakers **Risdon Slate**, Ph.D, Professor of Criminology Florida Southern College on Mental Health and Criminal Justice, and **William Allen**, J.D., M.Div., Associate Professor, Bioethics Law & Medicine, University of Florida.

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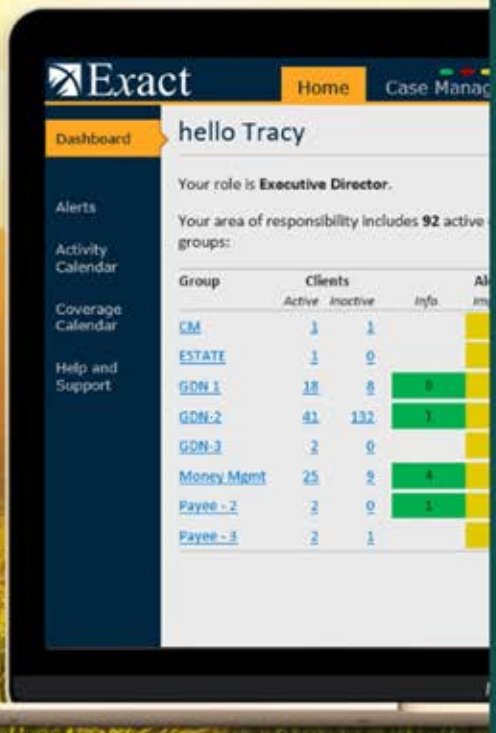

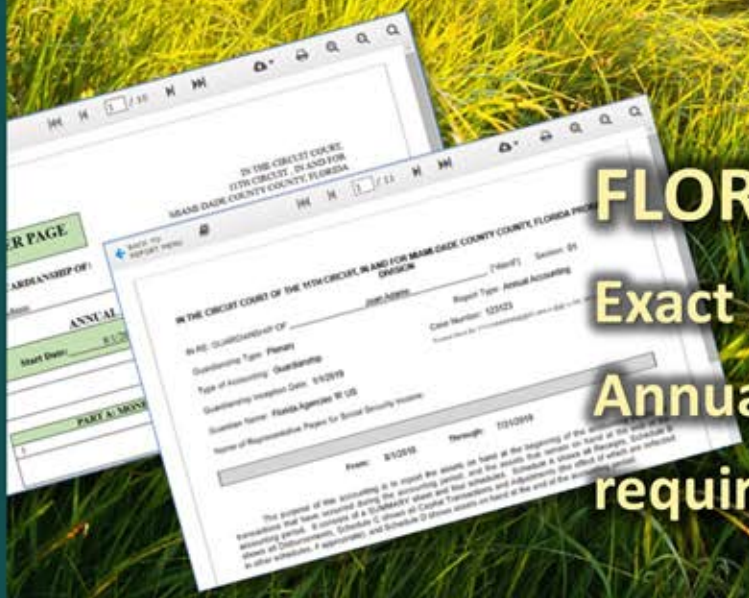

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ASK THE ATTORNEY

The Baker Act: An Overview

by Gerald F. O'Brien, Esq.

The Florida Mental Health Act (commonly referred to as the Baker Act), which became effective in 1972 and was substantially reformed in 1996, is found in Chapter 394 of the Florida Statutes. The Baker Act was named after Maxine Baker, a former State Representative from Miami who sponsored the Act. Before the Baker Act was enacted, a person could be placed in a state hospital if three people signed affidavits and secured the approval of a county judge. The old law stated that the committing judge was required to have any destitute person with mental illness committed to the sheriff for safekeeping until he/she could be transferred to a state hospital. Children as young as twelve could be placed into state hospitals with adults. Individuals involuntarily hospitalized were allowed only one person with whom they could openly and privately correspond. There was no specific period of commitment before a person's confinement would be reconsidered by a judge. [1]

The Baker Act prohibits the admission of persons to state institutions without just cause and provides for attorney representation to persons for whom involuntary placement is sought. All involuntary placements must be reviewed at a minimum of every six months and patients are allowed to communicate with whomever they wish. The law also prohibits the confinement of persons with mental illnesses in jails, unless they have been accused of crimes. [2]

In enacting Chapter 394, the Florida legislature directed the "Department of Children and Families to evaluate, research, plan, and recommend… programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders."[3] Among other things, the Act is intended to: 1) provide emergency service and temporary detention and evaluation when required; 2) require involuntary placement only when expert evaluation determines it to be necessary; 3) provide treatment or evaluation in clinically appropriate settings most likely to facilitate the person's return to the community; and 4) guarantee individual dignity and human rights to all persons admitted to mental health facilities.[4] The Act provides that an individual may apply for voluntary admission or involuntary admission may be sought for the individual. This article will discuss the involuntary process.

An involuntary examination may be initiated through any one of the three following means[5]:

1. A Circuit Court may enter an ex parte order, based

upon sworn testimony of a person with knowledge, directing a law enforcement officer to transport a person meeting criteria for involuntary examination to the nearest receiving facility.

2. A Law Enforcement Officer who observes someone who appears to meet the criteria for admission, may take that person to the nearest receiving facility without the necessity of a prior Court Order.

3. A Physician, Clinical Psychologist, Psychiatric Nurse, or Clinical Social Worker may sign a certificate stating that he or she has examined the person within the preceding 48 hours and finds that the person appears to meet criteria for involuntary admission. If needed, a law enforcement officer may take that person into custody and deliver him or her to the nearest receiving facility.

The aforementioned means to initiate an involuntary examination must be based upon the following criteria:

1. There is reason to believe that the person has a mental illness and because of his or her mental illness: a) has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or b) the person is unable to determine for himself or herself whether examination is necessary; and

2.a. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

2.b. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.6

When someone is transported to a Baker Act receiving facility, the law requires that he or she must be examined without unnecessary delay by a clinical psychologist or psychiatrist. The individual may be held in the facility involuntarily up to 72 hours. Within that 72-hour period, one of the following must occur: 1) he or she is released unless charged with a crime; 2) he or she is released for outpatient treatment; 3) he or she consents to voluntary placement; or 4) a Petition For Involuntary Placement, requesting longer involuntary treatment, may be filed by the facility administrator of the receiving facility.

A Petition For Involuntary Placement, which is not to be confused with the involuntary examination, must be signed by the receiving facility administrator and supported by the opinion of a psychiatrist and a second supporting opinion or a clinical psychologist or another psychiatrist who have examined the person within the preceding 72 hours. The Public Defender is appointed by the Court to represent the person and the Court must hold the involuntary placement hearing within 5 days after the Petition is filed. The person being involuntarily held has a right to be present at the hearing. In Sarasota County, the hearings are typically heard at the facility by a magistrate.

The Baker Act requires a finding of clear and convincing evidence for the need for continued involuntary placement.[7] There must be consideration of any less restrictive treatment alternatives which would offer an opportunity for improvement of the person's condition. If it is concluded that the person continues to meet criteria

for involuntary placement and that less restrictive treatment alternatives have been judged to be inappropriate, the court must order the person to be retained at the receiving facility or transferred to an appropriate treatment facility for a period of up to 6 months. However, if it is determined, at any time, that the individual no longer meets criteria for continued involuntary placement, he or she must be discharged. Persons held in either receiving or treatment facilities have the right to seek a writ of habeas corpus challenging their continued involuntary detention. It is important to note that Chapter 744 (Guardianship) of the Florida Statutes does not authorize a Guardian to commit a Ward for involuntary mental health treatment without first obtaining specific authority from the Court pursuant to Chapter 394 (Baker Act).

8 The Baker Act is the more specific law which prevails over the more general guardianship statute. Additionally, in Handley v. Dennis, 642 So.2d 115 (Fla. 1st DCA 1994), the Court of Appeal for the First District Court ruled that the rights of the patient under the Baker Act supersede rights of the guardian under the guardianship law when the two laws conflict. According to the ruling in Handley, "the Court has concluded that if there is a conflict in these laws, both the duty of the guardian and the power of the circuit court in the guardianship proceeding must give way to the ward's right under the Baker Act to be released to a less restrictive environment… and all other provisions of the guardianship law regarding the residence of the ward, are inapplicable to Baker Act patients." Handley, Id. p. 117.

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Expert Tip: Use Check Lists

Ever gone to the store for bread and come home with two bags of groceries and no bread? This happens more times than we like to admit. In our busy lives, we are often distracted. That's the beauty of a checklist! By definition, "a checklist is a type of informational job aid used to reduce failure by compensating for potential limits of human memory and attention. It helps to ensure consistency and completeness in carrying out a task." So, if a checklist can ensure that we come home from the store with a loaf of bread, how can we apply the same idea to the business of guardianship?

We talk a lot about best practices in Guardianship, but without a tool to help put those practices into play—consistently—we are subject to the limits of memory and attention. Using software with a checklist feature overcomes those shortcomings by providing the framework to create a work flow process and track activity progress. SEM Applications Guardianship Software provides customizable checklist options that display activity due dates on the calendar and provide reports to list outstanding items.

A good Checklist doesn't need to be elaborate; it needs to be duplicable. Create checklists for accountability in court required activities, to establish a progression for assigned tasks, and as a way to define company procedures. Check List items should be meaningful activities and actions or items that are critical to success. A checklist that is too long or complex to comfortably manage or one that includes items that are only rarely necessary will be frustrating to update and maintain. Conversely, a checklist that is vague or overly generalized may not provide enough direction to be helpful.

Start with one set of vital tasks or focus on a process that has court required activities or tasks that could be easily missed or forgotten. Order the tasks by priority and then refine the list to contain only items critical to success. For example, a New Client Checklist would only need to include a task to "Close existing bank accounts" rather than multiple tasks to "Close Checking account" and "Close Savings account". A task to "Marshall all assets" might prove to be too general. It might be wiser to include options for specific types of assets (i.e. cash assets, real estate, etc.).

With customization options, you can make course corrections as you go until you have a Checklist that fits your needs perfectly!

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