

**Representative Marsha Judkins** proposes the following substitute bill:

**REQUIREMENTS FOR SUPPORTED DECISION-MAKING**

**AGREEMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marsha Judkins**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses supported decision-making agreements and guardianship.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends provisions concerning the rights of certain individuals who are under a court-ordered guardianship;
- ▶ prescribes the principles by which provisions related to supported decision-making agreements should be interpreted;
- ▶ describes the requirements for a supported decision-making agreement;
- ▶ authorizes the use of a supported decision-making agreement by certain individuals, subject to the permission of an individual's guardian or conservator if the supported decision-making agreement includes an area over which a court has granted authority to the guardian or conservator;
- ▶ describes the duties of an individual who is a supporter under a supported decision-making agreement;
- ▶ provides that a supported decision-making agreement may be revoked or



26 terminated, with certain conditions;

27 ▶ describes how a supported decision-making agreement interacts with and affects  
28 other laws and principles; and

29 ▶ provides protections for a person who relies, in good faith, on the provisions of a  
30 supported decision-making agreement.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364

38 **75-5-301.5**, as enacted by Laws of Utah 2022, Chapter 358 and last amended by  
39 Coordination Clause, Laws of Utah 2022, Chapter 358

40 **75-5-312**, as last amended by Laws of Utah 2022, Chapter 358 and repealed and  
41 reenacted by Laws of Utah 2022, Chapter 441 and last amended by Coordination  
42 Clause, Laws of Utah 2022, Chapter 358

43 **75-5-417**, as last amended by Laws of Utah 2022, Chapter 358

44 ENACTS:

45 **75-5-701**, Utah Code Annotated 1953

46 **75-5-702**, Utah Code Annotated 1953

47 **75-5-703**, Utah Code Annotated 1953

48 **75-5-704**, Utah Code Annotated 1953

49 **75-5-705**, Utah Code Annotated 1953

50 **75-5-706**, Utah Code Annotated 1953

51 **75-5-707**, Utah Code Annotated 1953

52 **75-5-708**, Utah Code Annotated 1953

53 **75-5-709**, Utah Code Annotated 1953



55 *Be it enacted by the Legislature of the state of Utah:*

56 Section 1. Section **75-1-201** is amended to read:

57 **75-1-201. General definitions.**

58 Subject to additional definitions contained in the subsequent chapters that are  
59 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in  
60 this code:

61 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of  
62 attorney, an individual authorized to make decisions concerning another's health care, and an  
63 individual authorized to make decisions for another under a natural death act.

64 (2) "Application" means a written request to the registrar for an order of informal  
65 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment  
66 Proceedings.

67 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any  
68 present or future interest, vested or contingent, and also includes the owner of an interest by  
69 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to  
70 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a  
71 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security  
72 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar  
73 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated  
74 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a  
75 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of  
76 appointment, and a person in whose favor a power of attorney or a power held in any  
77 individual, fiduciary, or representative capacity is exercised.

78 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of  
79 an insurance or annuity policy, of an account with POD designation, of a security registered in  
80 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or  
81 other nonprobate transfer at death.

82 (5) "Child" includes any individual entitled to take as a child under this code by  
83 intestate succession from the parent whose relationship is involved and excludes any person  
84 who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

85 (6) "Claims," in respect to estates of decedents and protected persons, includes  
86 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,  
87 and liabilities of the estate which arise at or after the death of the decedent or after the

88 appointment of a conservator, including funeral expenses and expenses of administration.

89 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of  
90 a decedent or protected person to specific assets alleged to be included in the estate.

91 (7) "Conservator" means a person who is appointed by a court to manage the estate of a  
92 protected person.

93 (8) "Court" means any of the courts of record in this state having jurisdiction in matters  
94 relating to the affairs of decedents.

95 (9) "Descendant" of an individual means all of his descendants of all generations, with  
96 the relationship of parent and child at each generation being determined by the definition of  
97 child and parent contained in this title.

98 (10) "Devise," when used as a noun, means a testamentary disposition of real or  
99 personal property and, when used as a verb, means to dispose of real or personal property by  
100 will.

101 (11) "Devisee" means any person designated in a will to receive a devise. For the  
102 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to  
103 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the  
104 devisee, and the beneficiaries are not devisees.

105 (12) "Disability" means cause for a protective order as described by Section [75-5-401](#).

106 (13) "Distributee" means any person who has received property of a decedent from his  
107 personal representative other than as a creditor or purchaser. A testamentary trustee is a  
108 distributee only to the extent of distributed assets or increment thereto remaining in his hands.  
109 A beneficiary of a testamentary trust to whom the trustee has distributed property received from  
110 a personal representative is a distributee of the personal representative. For purposes of this  
111 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to  
112 the extent of the devised assets.

113 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs  
114 are subject to this title as originally constituted and as it exists from time to time during  
115 administration.

116 (15) "Exempt property" means that property of a decedent's estate which is described in  
117 Section [75-2-403](#).

118 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

119 (17) "Foreign personal representative" means a personal representative of another  
120 jurisdiction.

121 (18) "Formal proceedings" means proceedings conducted before a judge with notice to  
122 interested persons.

123 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,  
124 account with POD designation, security registered in beneficiary form (TOD), pension,  
125 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of  
126 appointment or a power of attorney, a supported decision-making agreement, or a dispositive,  
127 appointive, or nominative instrument of any similar type.

128 (20) "Guardian" means a person who has qualified as a guardian of a minor or  
129 incapacitated person pursuant to testamentary or court appointment, or by written instrument as  
130 provided in Section [75-5-202.5](#), but excludes one who is merely a guardian ad litem.

131 (21) "Heirs," except as controlled by Section [75-2-711](#), means persons, including the  
132 surviving spouse and state, who are entitled under the statutes of intestate succession to the  
133 property of a decedent.

134 (22) "Incapacitated" or "incapacity" is measured by functional limitations and means a  
135 judicial determination after proof by clear and convincing evidence that an adult's ability to do  
136 the following is impaired to the extent that the individual lacks the ability, even with  
137 [~~appropriate technological~~] assistance, to meet the essential requirements for financial  
138 protection or physical health, safety, or self-care:

139 (a) receive and evaluate information;

140 (b) make and communicate decisions; or

141 (c) provide for necessities such as food, shelter, clothing, health care, or safety.

142 (23) "Informal proceedings" mean those conducted without notice to interested persons  
143 by an officer of the court acting as a registrar for probate of a will or appointment of a personal  
144 representative.

145 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,  
146 beneficiaries, and any others having a property right in or claim against a trust estate or the  
147 estate of a decedent, ward, or protected person. It also includes persons having priority for  
148 appointment as personal representative, other fiduciaries representing interested persons, a  
149 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but

150 incapacitated. The meaning as it relates to particular persons may vary from time to time and  
151 shall be determined according to the particular purposes of, and matter involved in, any  
152 proceeding.

153 (25) "Issue" of a person means descendant as defined in Subsection (9).

154 (26) "Joint tenants with the right of survivorship" and "community property with the  
155 right of survivorship" includes coowners of property held under circumstances that entitle one  
156 or more to the whole of the property on the death of the other or others, but excludes forms of  
157 coownership registration in which the underlying ownership of each party is in proportion to  
158 that party's contribution.

159 (27) "Lease" includes an oil, gas, or other mineral lease.

160 (28) "Letters" includes letters testamentary, letters of guardianship, letters of  
161 administration, and letters of conservatorship.

162 (29) "Minor" means a person who is under 18 years [~~of age~~] old.

163 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property  
164 is used as security.

165 (31) "Nonresident decedent" means a decedent who was domiciled in another  
166 jurisdiction at the time of his death.

167 (32) "Organization" includes a corporation, limited liability company, business trust,  
168 estate, trust, partnership, joint venture, association, government or governmental subdivision or  
169 agency, or any other legal or commercial entity.

170 (33) "Parent" includes any person entitled to take, or who would be entitled to take if  
171 the child died without a will, as a parent under this code by intestate succession from the child  
172 whose relationship is in question and excludes any person who is only a stepparent, foster  
173 parent, or grandparent.

174 (34) "Payor" means a trustee, insurer, business entity, employer, government,  
175 governmental agency or subdivision, or any other person authorized or obligated by law or a  
176 governing instrument to make payments.

177 (35) "Person" means an individual or an organization.

178 (36) (a) "Personal representative" includes executor, administrator, successor personal  
179 representative, special administrator, and persons who perform substantially the same function  
180 under the law governing their status.

- 181 (b) "General personal representative" excludes special administrator.
- 182 (37) "Petition" means a written request to the court for an order after notice.
- 183 (38) "Proceeding" includes action at law and suit in equity.
- 184 (39) "Property" includes both real and personal property or any interest therein and  
185 means anything that may be the subject of ownership.
- 186 (40) "Protected person" means a person for whom a conservator has been appointed. A  
187 "minor protected person" means a minor for whom a conservator has been appointed because  
188 of minority.
- 189 (41) "Protective proceeding" means a proceeding described in Section 75-5-401.
- 190 (42) "Record" means information that is inscribed on a tangible medium or that is  
191 stored in an electronic or other medium and is retrievable in perceivable form.
- 192 (43) "Registrar" refers to the official of the court designated to perform the functions of  
193 registrar as provided in Section 75-1-307.
- 194 (44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of  
195 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in  
196 payments out of production under such a title or lease, collateral trust certificate, transferable  
197 share, voting trust certificate, and, in general, any interest or instrument commonly known as a  
198 security, or any certificate of interest or participation, any temporary or interim certificate,  
199 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
200 the foregoing.
- 201 (45) "Settlement," in reference to a decedent's estate, includes the full process of  
202 administration, distribution, and closing.
- 203 (46) "Sign" means, with present intent to authenticate or adopt a record other than a  
204 will:
- 205 (a) to execute or adopt a tangible symbol; or
- 206 (b) to attach to or logically associate with the record an electronic symbol, sound, or  
207 process.
- 208 (47) "Special administrator" means a personal representative as described in Sections  
209 75-3-614 through 75-3-618.
- 210 (48) "State" means a state of the United States, the District of Columbia, the  
211 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of

212 the United States, or a Native American tribe or band recognized by federal law or formally  
213 acknowledged by a state.

214 (49) "Successor personal representative" means a personal representative, other than a  
215 special administrator, who is appointed to succeed a previously appointed personal  
216 representative.

217 (50) "Successors" means persons, other than creditors, who are entitled to property of a  
218 decedent under the decedent's will or this title.

219 (51) "Supervised administration" refers to the proceedings described in Title 75,  
220 Chapter 3, Part 5, Supervised Administration.

221 (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security  
222 Registration Act, means that an individual has neither predeceased an event, including the  
223 death of another individual, nor is considered to have predeceased an event under Section  
224 [75-2-104](#) or [75-2-702](#). The term includes its derivatives, such as "survives," "survived,"  
225 "survivor," and "surviving."

226 (53) "Testacy proceeding" means a proceeding to establish a will or determine  
227 intestacy.

228 (54) "Testator" includes an individual of either sex.

229 (55) "Trust" includes a health savings account, as defined in Section 223, Internal  
230 Revenue Code, any express trust, private or charitable, with additions thereto, wherever and  
231 however created. The term also includes a trust created or determined by judgment or decree  
232 under which the trust is to be administered in the manner of an express trust. The term  
233 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal  
234 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers,  
235 custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts  
236 providing for certificates to be issued to beneficiaries, common trust funds, voting trusts,  
237 preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security  
238 arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends,  
239 interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any  
240 arrangement under which a person is nominee or escrowee for another.

241 (56) "Trustee" includes an original, additional, and successor trustee, and cotrustee,  
242 whether or not appointed or confirmed by the court.



243 (57) "Ward" means a person for whom a guardian has been appointed. A "minor ward"  
244 is a minor for whom a guardian has been appointed solely because of minority.

245 (58) "Will" includes codicil and any testamentary instrument which merely appoints an  
246 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits  
247 the right of an individual or class to succeed to property of the decedent passing by intestate  
248 succession.

249 Section 2. Section 75-5-301.5 is amended to read:

250 **75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an**  
251 **incapacitated person.**

252 (1) Except as otherwise provided by this chapter or any other law, a person alleged to  
253 be incapacitated has the right to:

254 (a) be represented by counsel before a guardianship is imposed and have counsel  
255 represent the person during the guardianship proceeding;

256 (b) receive a copy of all documents filed in a guardianship proceeding;

257 (c) have a relative, a physician, or any interested person speak about or raise any issue  
258 of concern on behalf of the person during the guardianship proceeding;

259 (d) receive information about guardianships from the court; and

260 (e) be treated with respect and dignity.

261 (2) Except as otherwise provided by this chapter or any other law, and except for an  
262 individual under a court-ordered guardianship with a severe intellectual disability and  
263 significant limitations in adaptive behavior to whom Subsections (2)(h), (j), (k), (t), and (u) do  
264 not apply, an incapacitated person for whom a guardian is appointed has right to:

265 (a) have counsel represent the incapacitated person at any time after the guardian is  
266 appointed;

267 (b) have a relative, a physician, or any interested person speak about or raise any issue  
268 of concern on behalf of the person in any court hearing about the guardianship;

269 (c) receive a copy of all documents filed in court regarding the guardianship;

270 (d) receive information about guardianships from the court;

271 (e) ask questions and express concerns or complaints about a guardian and the actions  
272 of a guardian to the court;

273 (f) participate in developing an individualized plan for the incapacitated person's care,

274 including:

275 (i) managing the incapacitated person's assets and property;

276 (ii) determining the incapacitated person's residence; and

277 (iii) determining the services to be received by the incapacitated person;

278 (g) be given consideration in regards to the incapacitated person's current and

279 previously stated desires, preferences for health care and medical treatment, and religious and

280 moral beliefs;

281 (h) remain as independent as possible, including giving deference to the incapacitated

282 person's preference for the incapacitated person's residence and standard of living:

283 (i) as expressed or demonstrated before a determination of capacity was made; or

284 (ii) as currently expressed or demonstrated by the incapacitated person if the preference

285 is reasonable under the circumstances;

286 (i) be granted the greatest degree of freedom possible that is consistent with the reasons

287 for the guardianship;

288 (j) be able to exercise control over all aspects of the incapacitated person's life that are

289 not granted to the guardian in the order of appointment;

290 (k) engage in any activity that the court has not expressly reserved for the guardian,

291 including marriage or domestic partnership, traveling, working, or having a driver license;

292 (l) be treated with respect and dignity;

293 (m) be treated fairly by the incapacitated person's guardian;

294 (n) maintain privacy and confidentiality in personal matters, except as needed by the

295 incapacitated person's guardian to conduct necessary affairs for the incapacitated person;

296 ~~[(o) receive telephone calls and personal mail and associate with relatives and~~

297 ~~acquaintances unless the guardian and the court determine that the association should be~~

298 ~~restricted or prohibited in accordance with Section 75-5-312.5;]~~

299 ~~[(p)]~~ (o) receive timely, effective, and appropriate health care and medical treatment

300 that does not violate the incapacitated person's rights;

301 ~~[(q)]~~ (p) have all services provided by a guardian at a reasonable rate of compensation;

302 ~~[(r)]~~ (q) have a court review any request for payment by a guardian to avoid excessive

303 or unnecessary fees or duplicative billing;

304 ~~[(s)]~~ (r) receive prudent financial management of the incapacitated person's property;

305           ~~[(t)]~~ (s) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the  
306 exception provided in Subsection 75-5-312(7)(d), receive a copy of an accounting report  
307 regarding the incapacitated person's estate that is submitted to the court by the guardian under  
308 Section 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for  
309 the incapacitated person;

310           ~~[(u)]~~ (t) receive and control the incapacitated person's salary;

311           ~~[(v)]~~ (u) maintain a bank account and manage the incapacitated person's personal  
312 money; and

313           ~~[(w)]~~ (v) ask the court to:

314           (i) review the management activity of a guardian if a dispute cannot be resolved  
315 regarding the guardian's management;

316           (ii) continue to review the need for a guardianship or to modify or terminate a  
317 guardianship; and

318           (iii) enter an order restoring the incapacitated person's capacity at the earliest possible  
319 time.

320           (3) The rights of an incapacitated person under this section do not abrogate any remedy  
321 provided by law.

322           (4) Any right described in this section may be:

323           (a) addressed in a guardianship proceeding; or

324           (b) enforced through a private cause of action.

325           Section 3. Section 75-5-312 is amended to read:

326           **75-5-312. General powers and duties of guardian -- Penalties.**

327           (1) (a) A guardian of an incapacitated person shall diligently and in good faith carry out  
328 the specific duties, powers, and rights that the guardian is granted:

329           (i) in an order of appointment by a court under Section 75-5-304; and

330           (ii) under this section.

331           (b) A court may, in the order of appointment, place specific limitations on the  
332 guardian's power, duties, and rights.

333           (c) (i) Except as provided in this Subsection (1), a guardian has the same powers,  
334 rights, and duties respecting the ward that a parent has respecting the parent's unemancipated  
335 minor.

336 (ii) A guardian is not liable to a third person for acts of the guardian's ward solely by  
337 reason of the relationship described in Subsection (1)(c)(i).

338 (d) In carrying out duties, powers, and rights that a guardian is granted, the guardian  
339 shall encourage the ward, to the extent practicable, to participate in decisions, exercise  
340 self-determination, act on the ward's own behalf, and develop or regain the capacity to manage  
341 the ward's personal affairs.

342 (e) To the extent known, a guardian, in making decisions about the ward, shall consider  
343 the expressed desires, preferences, and personal values of the ward.

344 (2) Except as modified by an order of appointment under Section 75-5-304, a guardian  
345 has the following duties and powers:

346 (a) to the extent that it is consistent with the terms of any order by a court relating to  
347 detention or commitment of the ward, a guardian is entitled to custody of the person of the  
348 ward and may establish the ward's place of residence within, or outside of, this state, except  
349 that the guardian must give consideration to the ward's preference for the ward's place of  
350 residence in accordance with Section 75-5-301.5;

351 (b) if a guardian is entitled to custody of the ward, the guardian shall provide for the  
352 care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's  
353 training and education;

354 (c) without regard to custodial rights of the ward's person, a guardian shall take  
355 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and  
356 commence protective proceedings if other property of the ward is in need of protection;

357 (d) a guardian may give the consent or approval that may be necessary to enable the  
358 ward to receive medical or other professional care, counsel, treatment, or service, except that  
359 the guardian must:

360 (i) give consideration to the ward's current and previously stated desires for health care  
361 and medical treatment in accordance with Section 75-5-301.5; and

362 (ii) respect the ward's right to receive timely, effective, and appropriate health care in  
363 accordance with Section 75-5-301.5;

364 (e) a guardian is required to notify any interested person named in the order of  
365 appointment under Subsection 75-5-304(4) of any significant health care or treatment received  
366 by the ward;

- 367 (f) a guardian is required to immediately notify persons who request notification and  
368 are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:
- 369 (i) the ward's admission to a hospital for three or more days or to a hospice program;  
370 (ii) the ward's death; or  
371 (iii) the arrangements for the disposition of the ward's remains;
- 372 (g) a guardian is required to immediately notify all interested persons if the guardian  
373 reasonably believes that the ward's death is likely to occur within the next 10 days, based on:
- 374 (i) the guardian's own observations; or  
375 (ii) information from the ward's physician or other medical care providers;
- 376 (h) a guardian is required to:
- 377 (i) unless emergency conditions exist:
- 378 (A) file with the court a notice of the guardian's intent to move the ward; and  
379 (B) serve the notice on all interested persons at least 10 days before the day on which  
380 the guardian moves the ward; or
- 381 (ii) take reasonable steps to:
- 382 (A) notify all interested persons of the guardian's intent to move the ward; and  
383 (B) file the notice of the move with the court as soon as practicable following the  
384 earlier of the move or the date when the guardian's intention to move the ward is made known  
385 to the ward, the ward's care giver, or any other third party;
- 386 (i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or  
387 prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives, or  
388 friends;
- 389 (j) if no conservator for the estate of the ward has been appointed, a guardian may:
- 390 (i) institute proceedings to compel any person under a duty to support the ward or to  
391 pay sums for the welfare of the ward to perform that duty;
- 392 (ii) compel the production of the ward's estate documents, including the ward's will,  
393 trust, power of attorney, and any advance health care directive; and
- 394 (iii) receive money and tangible property deliverable to the ward and apply the money  
395 and property for support, care, and education of the ward, except that:
- 396 (A) the guardian may not use funds from the ward's estate for room and board that the  
397 guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for

398 the service is approved by order of the court made upon notice to at least one adult relative in  
399 the nearest degree of kinship to the ward in which there is an adult; and

400 (B) the guardian shall exercise care to conserve any excess for the ward's needs;

401 (k) if no conservator for the estate of the ward has been appointed:

402 (i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a  
403 guardian shall send a report with a full accounting to the court on an annual basis; or

404 (ii) for estates less than \$50,000 excluding the residence owned by the ward, a guardian  
405 shall fill out an informal annual report and mail the report to the court;

406 (l) a guardian shall provide an annual accounting of the status of the ward, including a  
407 report of the physical and mental condition of the ward, the ward's estate that has been subject  
408 to the guardian's possession, the ward's place of residence and others living in the same  
409 household, to the court in the petition or the annual report as required under Subsection (2)(k);  
410 and

411 (m) a guardian shall comply with standards set by the National Guardianship  
412 Association for guardians to the extent that the standards are applicable to the guardian.

413 (3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person  
414 required to receive notice in guardianship proceedings as described in Section [75-5-309](#).

415 (4) (a) An accounting report under Subsection (2)(k) shall include a statement  
416 regarding:

417 (i) all assets at the beginning and end of the reporting year;

418 (ii) any income received during the year;

419 (iii) any disbursements for the support of the ward;

420 (iv) any investments or trusts that are held for the ward's benefit;

421 (v) any expenditures or fees charged to the ward's estate; and

422 (vi) any other expenses incurred by the ward's estate.

423 (b) The court may require additional information in an accounting report under  
424 Subsection (2)(k).

425 (c) The Judicial Council shall approve forms for the accounting reports described in  
426 Subsection (2)(k).

427 (d) An annual accounting report under Subsection (2)(k) shall be examined and  
428 approved by the court.

429 (e) If the ward's income is limited to a federal or state program requiring an annual  
430 accounting report, a copy of that report may be submitted to the court in lieu of the required  
431 annual accounting report under Subsection (2)(k).

432 (f) (i) A corporate fiduciary is not required to petition the court, but shall submit the  
433 corporate fiduciary's internal report annually to the court.

434 (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.

435 (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an  
436 accounting of the status of a ward under Subsection (2)(l).

437 (h) Upon a motion and after a hearing, the court may alter the frequency of, or the  
438 information included in, an accounting report provided to a ward in accordance with  
439 Subsection [~~75-5-301.5(2)(t)~~] 75-5-301.5(2)(s).

440 (5) If a conservator has been appointed for a ward:

441 (a) all of the ward's estate received by the guardian in excess of those funds expended  
442 to meet current expenses for support, care, and education of the ward shall be paid to the  
443 conservator for management as provided in this chapter; and

444 (b) the guardian shall account to the conservator for funds expended.

445 (6) (a) Any guardian of a person for whom a conservator has been appointed:

446 (i) shall control the custody and care of the ward; and

447 (ii) is entitled to receive reasonable sums for services and for room and board furnished  
448 to the ward as agreed upon between the guardian and the conservator if the amounts agreed  
449 upon are reasonable under the circumstances.

450 (b) The guardian may request the conservator to expend the ward's estate by payment  
451 to third persons or institutions for the ward's care and maintenance.

452 (7) (a) The court may impose a penalty in an amount not to exceed \$5,000 if a  
453 guardian:

454 (i) makes a substantial misstatement on filings of annual reports;

455 (ii) is guilty of gross impropriety in handling the property of the ward; or

456 (iii) willfully fails to file the report required by this section after receiving written  
457 notice from the court of the failure to file and after a grace period of two months has elapsed.

458 (b) The court may order restitution of funds misappropriated from the estate of a ward.

459 (c) A penalty under this Subsection (7) shall be paid by the guardian and may not be

460 paid by the ward or the ward's estate.

461 (d) The provisions and penalties in Subsection (2)(k) or (l) governing annual reports do  
462 not apply if the guardian or a coguardian is the parent of the ward.

463 (8) A person who refuses to accept the authority of a guardian with authority over  
464 financial decisions to transact business with the assets of the ward after receiving a certified  
465 copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the  
466 court determines that the person did not act in good faith in refusing to accept the authority of  
467 the guardian.

468 Section 4. Section **75-5-417** is amended to read:

469 **75-5-417. General duty of conservator.**

470 (1) A conservator shall act as a fiduciary and shall observe the standards of care as set  
471 forth in Section [75-7-902](#).

472 (2) (a) For all estates in excess of \$50,000 excluding the residence owned by the ward,  
473 the conservator shall send a report with a full accounting to the court on an annual basis.

474 (b) For estates less than \$50,000 excluding the residence owned by the ward, the  
475 conservator shall fill out an informal annual report and mail the report to the court.

476 (c) A report under Subsection (2)(a) or (b) shall include a statement regarding:

477 (i) all assets at the beginning and end of the reporting year;

478 (ii) any income received during the year;

479 (iii) any disbursements for the support of the ward;

480 (iv) any investments or trusts that are held for the ward's benefit;

481 (v) any expenditures or fees charged to the ward's estate; and

482 (vi) any other expenses incurred by the ward's estate.

483 (d) The Judicial Council shall approve the forms for the accounting reports described  
484 in Subsections (2)(a) and (b).

485 (e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and  
486 approved by the court.

487 (3) (a) Corporate fiduciaries are not required to fully petition the court, but shall submit  
488 their internal report annually to the court.

489 (b) A report under Subsection (3)(a) shall be examined and approved by the court.

490 (4) Upon a motion and after a hearing, the court may alter the frequency of, or the



491 information included in, an accounting report provided to a ward in accordance with  
492 Subsection [~~75-5-301.5(2)(t)~~] [75-5-301.5\(2\)\(s\)](#).

493 (5) (a) The court may impose a fine in an amount not to exceed \$5,000, if, after  
494 receiving written notice of the failure to file and after a grace period of two months have  
495 elapsed, a conservator or corporate fiduciary:

496 (i) makes a substantial misstatement on filings of any required annual reports;

497 (ii) is guilty of gross impropriety in handling the property of the ward; or

498 (iii) willfully fails to file the report required by this section.

499 (b) The court may also order restitution of funds misappropriated from the estate of a  
500 ward.

501 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be  
502 paid by the estate.

503 (6) These provisions and penalties governing annual reports do not apply if the  
504 conservator is the parent of the ward.

505 Section 5. Section **75-5-701** is enacted to read:

506 **Part 7. Supported Decision-making Agreements**

507 **75-5-701. Definitions.**

508 As used in this part:

509 (1) "Abuse" means the same as that term is defined in Section [26B-6-201](#).

510 (2) "Coercion" means influencing or attempting to influence a principal using force,  
511 threats, or intimidation.

512 (3) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

513 (4) "Exploitation" means the same as that term is defined in Section [26B-6-201](#).

514 (5) "Good faith" means honesty in fact in the conduct or transaction concerned.

515 (6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996,  
516 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.

517 (7) "Neglect" means the same as that term is defined in Section [26B-6-201](#).

518 (8) "Principal" means an individual who:

519 (a) is 18 years old or older;

520 (b) has a disability, as that term is defined in Section [26B-6-801](#);

521 (c) seeks to enter or has entered into a supported decision-making agreement with at

522 least one supporter; and

523 (d) has the permission of the individual's guardian or conservator to enter into a  
524 supported decision-making agreement, if the supported decision-making agreement includes an  
525 area over which a court has granted authority to the guardian or conservator.

526 (9) "Protected health information" means the same as that term is defined in 45 C.F.R.  
527 Sec. 160.103.

528 (10) "Supported decision-making" means the process of supporting and  
529 accommodating an individual in the decision-making process to make, communicate, and  
530 effectuate life decisions, without impeding the self-determination of the individual.

531 (11) "Supported decision-making agreement" means an agreement between a principal  
532 and at least one supporter that meets the requirements of Section [75-5-704](#).

533 (12) "Supporter" means an individual:

534 (a) who is 18 years old or older;

535 (b) without:

536 (i) a substantiated allegation of abuse, neglect, or exploitation;

537 (ii) a protective or restraining order; or

538 (iii) a conviction for:

539 (A) harm of another;

540 (B) theft; or

541 (C) financial crime; and

542 (c) who has agreed to provide specified assistance to a principal by entering into a  
543 supported decision-making agreement with the principal.

544 (13) "Undue influence" means the same as that term is defined in Section [26B-6-201](#).

545 Section 6. Section **75-5-702** is enacted to read:

546 **75-5-702. Purposes of part.**

547 The purposes of this part are to:

548 (1) provide a principal assistance in:

549 (a) gathering and assessing information;

550 (b) understanding options, responsibilities, and consequences of a decision; and

551 (c) communicating decisions for a principal if the principal wants assistance with  
552 communicating decisions;

553 (2) give a supporter legal status, as specified in a supported decision-making  
554 agreement, to be with a principal, to access information on behalf of a principal, and to  
555 participate in discussions with others when a principal is making decisions or seeking to obtain  
556 information; and

557 (3) enable a supporter to assist in making and communicating decisions for a principal,  
558 but not to substitute as the decision maker for a principal.

559 Section 7. Section **75-5-703** is enacted to read:

560 **75-5-703. Interpretation of part.**

561 This part shall be construed and applied in accordance with the following principles:

562 (1) a principal should be able to:

563 (a) live in the manner in which the principal wishes; and

564 (b) make decisions about accepting or refusing support, assistance, or protection, as  
565 long as doing so does not cause serious bodily injury, as that term is defined in Section  
566 [26B-5-301](#), to the principal, or harm to others;

567 (2) a principal should be informed about and, to the best of the principal's abilities,  
568 participate in the management of the principal's affairs;

569 (3) a principal should receive the most effective, yet least restrictive and intrusive,  
570 form of support, assistance, or protection when the principal is unable to manage the principal's  
571 affairs alone; and

572 (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds  
573 should be respected in supporting the principal.

574 Section 8. Section **75-5-704** is enacted to read:

575 **75-5-704. Supported decision-making agreement.**

576 (1) Subject to Subsection (7), a principal may enter into a supported decision-making  
577 agreement at any time if the principal:

578 (a) enters into the agreement voluntarily and without coercion or undue influence; and

579 (b) understands the nature and effect of the agreement.

580 (2) A principal is presumed to understand the nature and effect of a supported  
581 decision-making agreement unless the supported decision-making agreement involves an area  
582 over which a court has granted authority to a guardian or conservator.

583 (3) A supported decision-making agreement shall:

- 584           (a) be in writing;  
585           (b) state the date on which the agreement is effective;  
586           (c) designate at least one supporter;  
587           (d) describe:  
588           (i) how the principal uses supported decision-making to make decisions;  
589           (ii) the rights of the principal;  
590           (iii) the responsibilities of each supporter;  
591           (iv) the decision-making supports and accommodations the principal chooses to  
592 receive from each supporter; and  
593           (v) the types of decisions, if any, with which a supporter is not authorized to assist the  
594 principal;  
595           (e) include the ink or electronic signature of:  
596           (i) the principal;  
597           (ii) each supporter;  
598           (iii) a guardian or conservator, if required under Subsection [75-5-701\(4\)\(d\)](#); and  
599           (iv) (A) two witnesses; or  
600           (B) a notary public; and  
601           (f) describe how any perceived or actual conflict of interest between a supporter and  
602 the principal will be mitigated.  
603           (4) (a) A supported decision-making agreement executed other than in this state is  
604 valid in this state if, when the supported decision-making agreement was executed, the  
605 execution complied with the law of the jurisdiction that determines the meaning and effect of  
606 the supported decision-making agreement.  
607           (b) The meaning and effect of a supported decision-making agreement is determined by  
608 the law of the jurisdiction indicated in the supported decision-making agreement and, in the  
609 absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported  
610 decision-making agreement was executed.  
611           (5) (a) A supported decision-making agreement may include a release or other  
612 document by which the principal authorizes a supporter to access the principal's confidential  
613 information, subject to the terms of the supported decision-making agreement described in  
614 Subsection (2)(d) and the supporter's duties described in Section [75-5-705](#).

615 (b) Before a covered entity may share a principal's protected health information with a  
616 supporter, the principal shall sign a HIPAA consent form authorizing release of the protected  
617 health information to the supporter.

618 (c) Nothing in this part shall be construed to alter or preempt the requirements for  
619 protecting health information under HIPAA.

620 (6) Each supporter shall include with the supporter's signature:

621 (a) a description of the supporter's relationship to the principal;

622 (b) a statement of the supporter's willingness to act as a supporter;

623 (c) an acknowledgment of the supporter's duties; and

624 (d) an attestation that the supporter:

625 (i) agrees to honor the right of the principal to make decisions;

626 (ii) will not make decisions for the principal, including health care decisions; and

627 (iii) will respect and work to further the independence of the principal.

628 (7) A supported decision-making agreement may do one or more of the following:

629 (a) specify a time period for which the supported decision-making agreement is valid;

630 (b) designate more than one supporter;

631 (c) designate an alternate individual to act in the place of a supporter under  
632 circumstances specified in the supported decision-making agreement; or

633 (d) authorize a supporter to share information with another supporter or other  
634 individual named in the supported decision-making agreement.

635 Section 9. Section **75-5-705** is enacted to read:

636 **75-5-705. Supporter duties.**

637 (1) A supporter shall:

638 (a) act with the care, competence, and diligence ordinarily exercised by individuals in  
639 similar circumstances, and in accordance with the supporter's skills or expertise;

640 (b) act in good faith;

641 (c) comply with the terms of the supported decision-making agreement;

642 (d) maintain records, which the supporter shall make available to the principal upon  
643 request, concerning:

644 (i) the supporter's actions under the supported decision-making agreement; and

645 (ii) how the principal communicates and expresses opinions to the supporter; and

646 (e) ensure that all information collected on behalf of the principal pursuant to the  
647 supported decision-making agreement and this section is:

648 (i) kept confidential, as appropriate;

649 (ii) not subject to unauthorized access, use, or disclosure; and

650 (iii) properly disposed of when appropriate.

651 (2) Except as otherwise provided in the supported decision-making agreement or  
652 Subsection (3), a supporter may, as directed by the principal:

653 (a) assist the principal in understanding information, options, responsibilities, and  
654 consequences of the principal's life decisions, including decisions relating to the principal's  
655 affairs or supportive services;

656 (b) help the principal access, obtain, and understand information that is relevant to a  
657 life decision, including medical, psychological, financial, or educational decisions, or any  
658 treatment records or records related to the management of the principal's affairs or supportive  
659 services;

660 (c) assist the principal with finding, obtaining, and making appointments for supportive  
661 services, and implement the principal's plans for supportive services;

662 (d) help the principal monitor information about the principal's affairs or supportive  
663 services, including tracking future necessary or recommended services;

664 (e) ascertain the wishes and decisions of the principal, assist in communicating those  
665 wishes and decisions to others, and advocate to ensure that the wishes and decisions of the  
666 principal are implemented; or

667 (f) assist the principal with obtaining information to which the principal is entitled.

668 (3) A supporter may not:

669 (a) coerce, exploit, exert undue influence on, or make decisions on behalf of the  
670 principal;

671 (b) sign for the principal or provide an electronic signature of the principal to a third  
672 party;

673 (c) make health care decisions for the principal; or

674 (d) without the principal's consent:

675 (i) obtain information that is not reasonably related to matters with which the supporter  
676 is authorized to support or assist the principal pursuant to the supported decision-making

677 agreement;

678 (ii) use information acquired in connection with the supported decision-making  
679 agreement for a purpose other than supporting or assisting the principal pursuant to the  
680 supported decision-making agreement; or

681 (iii) delegate the supporter's duties to a third party.

682 Section 10. Section **75-5-706** is enacted to read:

683 **75-5-706. Revocation -- Withdrawal.**

684 (1) A principal may revoke a supported decision-making agreement at any time by  
685 providing written notice to all other parties to the agreement.

686 (2) A supporter may withdraw from a supported decision-making agreement at any  
687 time by providing written notice to all other parties to the agreement.

688 (3) A written notice of revocation or withdrawal under this section may be provided by  
689 electronic means.

690 Section 11. Section **75-5-707** is enacted to read:

691 **75-5-707. Termination.**

692 Unless otherwise provided in the supported decision-making agreement, a supported  
693 decision-making agreement is terminated upon the occurrence of any of the following:

694 (1) the death of the principal;

695 (2) revocation by the principal pursuant to Section [75-5-706](#);

696 (3) as to a specific supporter, if the supporter is no longer qualified by reason of failure  
697 to meet the requirements of Subsection [75-5-701\(8\)\(b\)](#);

698 (4) withdrawal by all of the supporters pursuant to Section [75-5-706](#) without the  
699 designation of a successor supporter;

700 (5) the principal's execution of a valid power of attorney, healthcare directive, or  
701 declaration for mental health treatment, except to the extent the executed document expressly  
702 continues, in whole or in part, the supported decision-making agreement; or

703 (6) a court's:

704 (a) determination that the principal does not have capacity to execute or consent to a  
705 supported decision-making agreement; or

706 (b) appointment of a temporary or permanent guardian or conservator, unless the  
707 court's order of appointment;

708 (i) modifies but continues the supported decision-making agreement; and  
709 (ii) limits the powers and duties of the guardian.

710 Section 12. Section **75-5-708** is enacted to read:

711 **75-5-708. Impact of supported decision-making agreement.**

712 (1) A decision or request made or communicated by a principal with the assistance of a  
713 supporter in accordance with the terms of a supported decision-making agreement and this part  
714 shall, for the purposes of any provision of law, be recognized as the decision or request of the  
715 principal and may be enforced on the same basis as a decision or request of the principal  
716 without support.

717 (2) The availability of a supported decision-making agreement does not limit the  
718 informal use of supported decision making, or preclude judicial consideration of informal  
719 supported decision-making arrangements as a less restrictive alternative to a guardianship or  
720 conservatorship.

721 (3) Execution of a supported decision-making agreement may not be a condition of  
722 participating in any activity, service, or program.

723 (4) A court may not consider a principal's execution of a supported decision-making  
724 agreement as evidence of the principal's incapacity.

725 (5) The existence of a supported decision-making agreement does not preclude the  
726 principal from acting independently of the supported decision-making agreement.

727 Section 13. Section **75-5-709** is enacted to read:

728 **75-5-709. Liability.**

729 (1) A person who is not a party to a supported decision-making agreement, including a  
730 provider of health care or financial services, that in good faith accepts or relies upon a  
731 supported decision-making agreement:

732 (a) may presume that the signatures on the supported decision-making agreement are  
733 genuine, unless the person has actual knowledge that any signature on the supported  
734 decision-making agreement is not genuine;

735 (b) may presume that a supported decision-making agreement is valid and that a  
736 purported supporter's authority is valid, unless the person has actual knowledge that the  
737 supported decision-making agreement or the purported supporter's authority has been revoked,  
738 terminated, or is otherwise void or invalid; and



739 (c) is not subject to civil or criminal liability, or discipline for unprofessional conduct,  
740 for giving effect to a provision in a supported decision-making agreement, or for following the  
741 direction of a supporter given in accordance with the supported decision-making agreement.

742 (2) If a person has reason to believe a principal is or has been the subject of abuse,  
743 neglect, or exploitation, or observes a principal being subjected to conditions or circumstances  
744 that would reasonably result in abuse, neglect, or exploitation, the person shall immediately  
745 report the suspected abuse, neglect, or exploitation to Adult Protective Services.

746 (3) The provisions of this part may not be construed to affect mandatory reporting  
747 obligations related to abuse, neglect, or exploitation.

748 (4) A supporter who violates this part or the terms of a supported decision-making  
749 agreement is liable to the principal or the principal's successor in interest for the amount  
750 required to restore the value of the principal's property to what it would have been had the  
751 violation not occurred.

752 (5) A transaction between a supporter and a principal that occurs while a supported  
753 decision-making agreement is in effect, or while the supporter is in a position of trust with the  
754 principal, and from which the supporter obtains a benefit or advantage, is voidable by the  
755 principal unless the supporter establishes that the transaction was fair to the principal.

756 Section 14. **Effective date.**

757 This bill takes effect on May 1, 2024.