

Guardianships and Supported Decision-Making Agreements Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Keven J. Stratton

LONG TITLE**General Description:**

This bill addresses guardianships and supported decision-making agreements.

Highlighted Provisions:

This bill:

- defines terms;
- repeals a provision that provides for the future repeal of statutory language concerning when counsel is not required for an allegedly incapacitated person;
- amends provisions concerning the rights of certain individuals who are under a court-ordered guardianship;
- amends provisions concerning the procedure for determining incapacity and appointing a guardian for an incapacitated person;
- 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 the individual's guardian, conservator, or other qualified person, as applicable;
- 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 terminated, with certain conditions;
- describes how a supported decision-making agreement interacts with and affects other laws and principles;
- provides protections for a person who relies, in good faith, on the provisions of a supported decision-making agreement; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-5-1, as last amended by Laws of Utah 2013, Chapter 364

63I-2-275, as last amended by Laws of Utah 2024, Third Special Session, Chapter 5

75-1-201, as last amended by Laws of Utah 2024, Chapter 364

75-5-301.5, as last amended by Laws of Utah 2024, Chapter 113

75-5-303, as last amended by Laws of Utah 2024, Chapter 113

75-5-312, as last amended by Laws of Utah 2022, Chapter 358 and repealed and

reenacted by Laws of Utah 2022, Chapter 441 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 358

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

ENACTS:

75-5-701, Utah Code Annotated 1953

75-5-702, Utah Code Annotated 1953

75-5-703, Utah Code Annotated 1953

75-5-704, Utah Code Annotated 1953

75-5-705, Utah Code Annotated 1953

75-5-706, Utah Code Annotated 1953

75-5-707, Utah Code Annotated 1953

75-5-708, Utah Code Annotated 1953

75-5-709, Utah Code Annotated 1953

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

Section 1. Section **7-5-1** is amended to read:

7-5-1 . Definitions -- Allowable trust companies -- Exceptions.

(1) As used in this chapter:

(a) "Business trust" means an entity engaged in a trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets.

(b) "Trust business" means, except as provided in Subsection (1)(c), a business in which

one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in [~~Subsection 75-1-201(55)~~] Section 75-1-201.

(c) "Trust business" does not include the following means of holding money, assets, or other property:

- (i) money held in a client trust account by an attorney authorized to practice law in this state;
- (ii) money held in connection with the purchase or sale of real estate by a person licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- (iii) money or other assets held in escrow by a person authorized by the department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the Utah Insurance Department to act as an escrow agent in this state;
- (iv) money held by a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property;
- (v) money held in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative or otherwise at the sole direction of the person to which the debt or payment is owed, including money held by an escrow agent for payment of taxes or insurance;
- (vi) money and other assets held in trust on an occasional or isolated basis by a person who does not represent that the person is engaged in the trust business in Utah;
- (vii) money or other assets found by a court to be held in an implied, resulting, or constructive trust;
- (viii) money or other assets held by a court appointed conservator, guardian, receiver, trustee, or other fiduciary if:
 - (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the court in the same manner as a personal representative under Title 75, Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure; and
 - (B) the conservator, trustee, or other fiduciary is a certified public accountant or has qualified for and received a designation as a certified financial planner,

- 99 chartered financial consultant, certified financial analyst, or similar designation
100 suitable to the court, that evidences the conservator's, trustee's, or other
101 fiduciary's professional competence to manage financial matters;
- 102 (ix) money or other assets held by a credit services organization operating in
103 compliance with Title 13, Chapter 21, Credit Services Organizations Act;
- 104 (x) money, securities, or other assets held in a customer account in connection with
105 the purchase or sale of securities by a regulated securities broker, dealer, or
106 transfer agent; or
- 107 (xi) money, assets, and other property held in a business trust for the benefit of
108 holders of certificates of beneficial interest if the fiduciary activities of the
109 business trust are merely incidental to conducting business in the business trust
110 form.
- 111 (d) "Trust company" means an institution authorized to engage in the trust business
112 under this chapter. Only the following may be a trust company:
- 113 (i) a Utah depository institution or its wholly owned subsidiary;
- 114 (ii) an out-of-state depository institution authorized to engage in business as a
115 depository institution in Utah or its wholly owned subsidiary;
- 116 (iii) a corporation, including a credit union service organization, owned entirely by
117 one or more federally insured depository institutions as defined in Subsection
118 7-1-103(8);
- 119 (iv) a direct or indirect subsidiary of a depository institution holding company that
120 also has a direct or indirect subsidiary authorized to engage in business as a
121 depository institution in Utah; and
- 122 (v) any other corporation continuously and lawfully engaged in the trust business in
123 this state since before July 1, 1981.
- 124 (2) Only a trust company may engage in the trust business in this state.
- 125 (3) The requirements of this chapter do not apply to:
- 126 (a) an institution authorized to engage in a trust business in another state that is engaged
127 in trust activities in this state solely to fulfill its duties as a trustee of a trust created
128 and administered in another state;
- 129 (b) a national bank, federal savings bank, federal savings and loan association, or federal
130 credit union authorized to engage in business as a depository institution in Utah, or
131 any wholly owned subsidiary of any of these, to the extent the institution is
132 authorized by its primary federal regulator to engage in the trust business in this state;

133 or

134 (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver,
135 guardian, trustee, or in any other fiduciary capacity.

136 Section 2. Section **63I-2-275** is amended to read:

137 **63I-2-275 . Repeal dates: Title 75.**

138 [~~Subsection 75-5-303(5)(d), regarding counsel for a person alleged to be incapacitated,~~
139 ~~is repealed July 1, 2028]~~ Reserved.

140 Section 3. Section **75-1-201** is amended to read:

141 **75-1-201 . Title definitions.**

142 As used in this title:

- 143 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,
144 an individual authorized to make decisions concerning another's health care, and an
145 individual authorized to make decisions for another under a natural death act.
- 146 (2) "Application" means a written request to the registrar for an order of informal probate or
147 appointment under Chapter 3, Part 3, Informal Probate and Appointment Proceedings.
- 148 (3)(a) "Beneficiary," as it relates to trust beneficiaries, includes:
- 149 (i) a person who has any present or future interest, vested or contingent; and
150 (ii) the owner of an interest by assignment or other transfer.
- 151 (b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to
152 enforce the trust.
- 153 (c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a
154 beneficiary of:
- 155 (i) an insurance or annuity policy;
156 (ii) an account with POD designation;
157 (iii) a security registered in beneficiary form (TOD);
158 (iv) a pension, profit-sharing, retirement, or similar benefit plan; or
159 (v) other nonprobate transfer at death.
- 160 (d) "Beneficiary," as it relates to a beneficiary designated in a governing instrument,
161 includes:
- 162 (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary
163 designation, a donee, appointee, or taker in default of a power of appointment; and
164 (ii) a person in whose favor a power of attorney or a power held in any individual,
165 fiduciary, or representative capacity is exercised.
- 166 (4) "Beneficiary designation" means a governing instrument naming a beneficiary of an

insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5)(a) "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved.

(b) "Child" does not include an individual who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6)(a) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

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

(7) "Community property with a right of survivorship" means joint tenants with the right of survivorship.

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

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

(10) "Descendant" means all of an individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

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

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

(13) "Disability" means cause for a protective order as described by Section 75-5-401.

(14) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his

hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

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

(16) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

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

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

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

(20) "General personal representative" does not include a special administrator.

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

(22)(a) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5 ~~and~~ [, and who has the powers

described in] ~~and~~

~~and~~ [Subsection 75-5-312(1)(c)(i) unless specifically limited by a court in the order

of] ~~and~~

~~and~~ [appointment] ~~and~~ .

(b) "Guardian" does not include a person who is merely a guardian ad litem.

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

(24) "Incapacitated" means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the

essential requirements for financial protection or physical health, safety, or self-care:

(a) receive and evaluate information;

(b) make and communicate decisions; or

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

(25) "Incapacity" means incapacitated.

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

(27)(a) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The meaning of interested person as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.

(b) "Interested person" includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated.

(28) "Issue" means a descendant of an individual.

(29)(a) "Joint tenants with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other.

(b) "Joint tenants with the right of survivorship" does not include forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

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

(31) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(32) "Minor" means a person who is under 18 years old.

(33) "Minor protected person" means a minor for whom a conservator has been appointed because of minority.

(34) "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.

(35) "Mortgage" means any conveyance, agreement, or arrangement in which property is

used as security.

(36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.

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

(38)(a) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title by intestate succession from the child whose relationship is in question.

(b) "Parent" does not include any person who is only a stepparent, foster parent, or grandparent.

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

(40) "Person" means an individual or an organization.

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

(42) "Petition" means a written request to the court for an order after notice.

(43) "Proceeding" includes action at law and suit in equity.

(44) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(45) "Protected person" means a person for whom a conservator has been appointed.

(46) "Protective proceeding" means a proceeding described in Section 75-5-401.

(47) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(48) "Registrar" means the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

(49) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or

right to subscribe to or purchase, any of the foregoing.

(50) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(51) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(52) "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.

(53) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

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

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

(56) "Supervised administration" means the proceedings described in Chapter 3, Part 5, Supervised Administration.

(57)(a) "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death Security Registration Act, that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702.

(b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

(58) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(59) "Testator" includes an individual of either sex.

(60)(a) "Trust" includes:

(i) a health savings account, as defined in Section 223 of the Internal Revenue Code;

(ii) an express trust, private or charitable, with additions thereto, wherever and however created; or

(iii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" does not include:

- (i) a constructive trust;
- (ii) a resulting trust;
- (iii) a conservatorship;
- (iv) a personal representative;
- (v) a trust account as defined in Chapter 6, Nonprobate Transfers;
- (vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors Act;
- (vii) a business trust providing for certificates to be issued to beneficiaries;
- (viii) a common trust fund;
- (ix) a voting trust;
- (x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;
- (xi) a security arrangement;
- (xii) a liquidation trust;
- (xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; or
- (xiv) any arrangement under which a person is nominee or escrowee for another.

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

(62) "Ward" means a person for whom a guardian has been appointed.

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

Section 4. Section **75-5-301.5** is amended to read:

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

(1) Except as otherwise provided by this chapter or any other law, ~~it~~ → [including

Subsection

75-5-312(1)(c)(i), ← ~~it~~ a person alleged to be incapacitated has the right to:

- (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding, except as provided in Subsection 75-5-303(6)(e);
- (b) receive a copy of all documents filed in a guardianship proceeding;

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

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

(e) be treated with respect and dignity.

(2) For a guardianship granted before May 7, 2025, the rights of an incapacitated person for whom a guardian is appointed are in accordance with the statutory provisions in effect as of the date that the guardianship was granted, including, as applicable, Subsection 75-5-312(1)(c)(i) unless expressly limited by a court in the order of appointment.

(3) Except as otherwise provided by this chapter or any other law, ~~it~~ **→** including Subsection

75-5-312(1)(e)(i), ~~← it~~ **→** for a guardianship granted on or after May 7, 2025, an incapacitated

person for whom a guardian is appointed has the right to:

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

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

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

(d) receive information about guardianships from the court;

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

~~[(f) participate in developing an individualized plan for the incapacitated person's care, including:]~~

~~[(i) managing the incapacitated person's assets and property;]~~

~~[(ii) determining the incapacitated person's residence; and]~~

~~[(iii) determining the services to be received by the incapacitated person;]~~

~~[(g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;]~~

~~[(h) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living;]~~

~~[(i) as expressed or demonstrated before a determination of capacity was made; or]~~

- 400 ~~[(ii) as currently expressed or demonstrated by the incapacitated person if the~~
401 ~~preference is reasonable under the circumstances;]~~
- 402 ~~[(i)]~~ (f) be granted the greatest degree of freedom possible that is consistent with the
403 reasons for the guardianship;
- 404 ~~[(j)]~~ be able to exercise control over all aspects of the incapacitated person's life that are
405 ~~not granted to the guardian in the order of appointment;]~~
- 406 ~~[(k)]~~ engage in any activity that the court has not expressly reserved for the guardian,
407 ~~including marriage or domestic partnership, traveling, working, or having a driver~~
408 ~~license;]~~
- 409 ~~[(l)]~~ (g) be treated with respect and dignity;
- 410 ~~[(m)]~~ (h) be treated fairly by the incapacitated person's guardian;
- 411 ~~[(n)]~~ maintain privacy and confidentiality in personal matters;]
- 412 ~~[(o)]~~ receive telephone calls and personal mail and associate with relatives and
413 ~~acquaintances unless the guardian and the court determine that the association should~~
414 ~~be restricted or prohibited in accordance with Section 75-5-312.5;]~~
- 415 ~~[(p)]~~ receive timely, effective, and appropriate health care and medical treatment that
416 ~~does not violate the incapacitated person's rights;]~~
- 417 ~~[(q)]~~ (i) have all services provided by a guardian at a reasonable rate of compensation;
- 418 ~~[(r)]~~ (j) have a court review any request for payment by a guardian to avoid excessive or
419 unnecessary fees or duplicative billing;
- 420 ~~[(s)]~~ (k) receive prudent financial management of the incapacitated person's property;
- 421 ~~[(t)]~~ (l) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the
422 exception provided in Subsection 75-5-312(7)(d), receive a copy of an accounting
423 report regarding the incapacitated person's estate that is submitted to the court by the
424 guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a
425 conservator is appointed for the incapacitated person; and
- 426 ~~[(u)]~~ receive and control the incapacitated person's salary;]
- 427 ~~[(v)]~~ maintain a bank account and manage the incapacitated person's personal money; and]
- 428 ~~[(w)]~~ (m) ask the court to:
- 429 (i) review the management activity of a guardian if a dispute cannot be resolved
430 regarding the guardian's management;
- 431 (ii) continue to review the need for a guardianship or to modify or terminate a
432 guardianship pursuant to Section 75-5-306 and Section 75-5-307; and
- 433 (iii) enter an order restoring the incapacitated person's capacity at the earliest possible

- time pursuant to Section 75-5-306 and Section 75-5-307.
- [~~(3)~~] (4) The court may not waive, suspend, or limit a right described in Subsection (3).
- (5) Except as otherwise provided by this chapter or any other law, and subject to Subsection
- (6), for a guardianship granted on or after May 7, 2025, an incapacitated person for
- whom a guardian is appointed has the right, to the extent practicable, to:
- (a) participate in developing an individualized plan for the incapacitated person's care,
- including:
- (i) managing the incapacitated person's assets and property;
- (ii) determining the incapacitated person's residence; and
- (iii) determining the services to be received by the incapacitated person;
- (b) be given consideration in regards to the incapacitated person's current and previously
- stated desires, preferences for health care and medical treatment, and religious and
- moral beliefs;
- (c) remain as independent as possible, including giving deference to the incapacitated
- person's preference for the incapacitated person's residence and standard of living:
- (i) as expressed or demonstrated before a determination of capacity was made; or
- (ii) as currently expressed or demonstrated by the incapacitated person if the
- preference is reasonable under the circumstances;
- (d) be able to exercise control over all aspects of the incapacitated person's life that are
- not granted to the guardian in an order of appointment of a limited guardianship;
- (e) maintain privacy and confidentiality in personal matters, to the extent that privacy
- and confidentiality does not inhibit the ability of the incapacitated person's guardian
- to fulfill the guardian's responsibilities or perform the guardian's duties;
- (f) receive telephone calls and personal mail and associate with relatives and
- acquaintances unless the guardian and the court determine that the association should
- be restricted or prohibited in accordance with Section 75-5-312.5;
- (g) receive timely, effective, and appropriate health care and medical treatment that does
- not violate the incapacitated person's rights;
- (h) receive an allowance or control a reasonable amount of the incapacitated person's
- earnings or other income; and
- (i) collaborate with the incapacitated person's guardian to use appropriate financial tools
- to maintain a bank account and manage the incapacitated person's personal money.
- (6) The court may waive or limit a right described in Subsection (5) if:
- (a) an interested party requests the waiver or limitation; and

(b) the court finds, by clear and convincing evidence, that there is a compelling reason for the waiver or limitation.

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

(b) This section may not be interpreted in a way that would permit or justify any action that violates a provision in Sections 76-5-111 through 76-5-111.4 or Section 76-5-112.5.

[(4)] (8) Any right described in this section may be:

(a) addressed in a guardianship proceeding; or

(b) enforced through a private cause of action.

Section 5. Section **75-5-303** is amended to read:

75-5-303 . Procedure for court appointment of a guardian of an incapacitated person.

(1) An allegedly incapacitated person or any person interested in [the] an allegedly incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.

(2)(a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.

(b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the allegedly incapacitated person [~~alleged to be incapacitated~~], unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent.

(c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.

(d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.

(3) The legal representation of [the] an allegedly incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:

(a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;

(b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or

(c) upon an express finding of good cause, the court orders otherwise.

(4)(a) The court may appoint a health care provider, as that term is defined in Section 75A-3-101, to examine the functional capabilities and limitations of the allegedly incapacitated person.

(b) An appointed health care provider shall submit to the court a report assessing, within the scope of the health care provider's license and experience, the functional capabilities and limitations of the allegedly incapacitated person to, with or without appropriate technological assistance:

(i) receive and evaluate information;

(ii) make and communicate decisions; and

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

~~(5) [The person alleged to be incapacitated may be examined by a physician or physician assistant appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may]~~

~~(a) The court may appoint a court visitor to:~~

~~(i) interview the person seeking appointment as guardian[;] ;~~

~~(ii) visit the present place of abode of the allegedly incapacitated person[~~-alleged to be incapacitated~~] and the place it is proposed that the allegedly incapacitated person will be detained or reside if the requested appointment is made[;] ; or~~

~~(iii) conduct other investigations or observations as directed by the court[, and submit a report in writing to the court].~~

~~(b) The court visitor shall submit a written report to the court.~~

~~[(5)] (6)(a) The allegedly incapacitated person[~~-alleged to be incapacitated~~] shall be present at the hearing [in person] and see or hear all evidence bearing upon the person's condition.~~

~~(b) [If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated,] The court may only waive the presence of the allegedly incapacitated person if all of the following criteria are met:~~

~~(i) the person is represented by an attorney;~~

~~(ii) [the court shall order an investigation by] a court visitor is appointed to investigate, the costs of which shall be paid by the person seeking the guardianship[;]~~

~~; and~~

(iii) following the investigation, the court finds that there is no reasonable accommodation that will enable the allegedly incapacitated person to be present for or participate in the hearing.

~~[(b)]~~ (c) ~~[The investigation by a]~~ A court visitor is not required to investigate under Subsection (6)(b)(ii) if there is clear and convincing evidence from a physician that the person alleged to be incapacitated [has:] is experiencing a state of extended comatosis that is likely to persist through the time of the hearing.

~~[(i) fourth stage Alzheimer's Disease;]~~

~~[(ii) extended comatosis; or]~~

~~[(iii)(A) an intellectual disability; and]~~

~~[(B) an intelligence quotient score under 25.]~~

~~[(e)]~~ (d) ~~[The]~~ In addition to the rights described in Section 75-5-301.5, an allegedly incapacitated person[-alleged to be incapacitated] is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed [physician] health care provider and the court visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the allegedly incapacitated person[-alleged to be incapacitated] or the person's counsel so requests.

~~[(d)]~~ (e) Counsel for the allegedly incapacitated person[-alleged to be incapacitated, as defined in Subsection 75-1-201(22),] is not required if all of the following criteria are met:

- (i) the allegedly incapacitated person is the biological or adopted child of the petitioner;
- (ii) the value of the allegedly incapacitated person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
- (iii) the allegedly incapacitated person's appearance at the hearing has not been waived and the person appears in court with the petitioner, as described in Subsection (6)(a);
- (iv) the allegedly incapacitated person is given the opportunity to communicate, to the extent possible, the person's acceptance of or objection to the appointment of [petitioner] the proposed guardian, including the opportunity to communicate that acceptance or objection to the court and, as applicable, to the person's supporters, health care providers, and attorney;
- (v) no attorney from the state court's list of attorneys who have volunteered to

- 570 represent respondents in guardianship proceedings is able to provide counsel to
571 the person within 60 days of the date of the [appointment] hearing, as described in
572 Subsection (2)(b);
- 573 (vi) the court is satisfied that counsel is not necessary [~~in order~~]to protect the
574 interests of the allegedly incapacitated person; and
- 575 (vii) the court appoints a court visitor and receives a report from the court visitor
576 under Subsection [(4)] (5).
- 577 Section 6. Section **75-5-312** is amended to read:
- 578 **75-5-312 . General powers and duties of guardian -- Penalties.**
- 579 (1)(a) A guardian of an incapacitated person shall diligently and in good faith carry out
580 the specific duties, powers, and rights that the guardian is granted:
- 581 (i) in an order of appointment by a court under Section 75-5-304; and
- 582 (ii) under this section.
- 583 (b) A court may, in the order of appointment, place specific limitations on the guardian's
584 power, duties, and rights.
- 585 (c)(i) Except as provided in this Subsection (1), a guardian has the same powers,
586 rights, and duties respecting the ward that a parent has respecting the parent's
587 unemancipated minor.
- 588 (ii) A guardian is not liable to a third person for acts of the guardian's ward solely by
589 reason of the relationship described in Subsection (1)(c)(i).
- 590 (d) In carrying out duties, powers, and rights that a guardian is granted, the guardian
591 shall encourage the ward, to the extent practicable, to participate in decisions,
592 exercise self-determination, act on the ward's own behalf, and develop or regain the
593 capacity to manage the ward's personal affairs.
- 594 (e) To the extent known, a guardian, in making decisions about the ward, shall consider
595 the expressed desires, preferences, and personal values of the ward.
- 596 (2) Except as modified by an order of appointment under Section 75-5-304, a guardian has
597 the following duties and powers:
- 598 (a) to the extent that it is consistent with the terms of any order by a court relating to
599 detention or commitment of the ward, a guardian is entitled to custody of the person
600 of the ward and may establish the ward's place of residence within, or outside of, this
601 state, except that the guardian must give consideration to the ward's preference for
602 the ward's place of residence in accordance with Section 75-5-301.5;
- 603 (b) if a guardian is entitled to custody of the ward, the guardian shall provide for the

care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education;

- (c) without regard to custodial rights of the ward's person, a guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection;
- (d) a guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service, except that the guardian must:
 - (i) give consideration to the ward's current and previously stated desires for health care and medical treatment in accordance with Section 75-5-301.5; and
 - (ii) respect the ward's right to receive timely, effective, and appropriate health care in accordance with Section 75-5-301.5;
- (e) a guardian is required to notify any interested person named in the order of appointment under Subsection 75-5-304(4) of any significant health care or treatment received by the ward;
- (f) a guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:
 - (i) the ward's admission to a hospital for three or more days or to a hospice program;
 - (ii) the ward's death; or
 - (iii) the arrangements for the disposition of the ward's remains;
- (g) a guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 10 days, based on:
 - (i) the guardian's own observations; or
 - (ii) information from the ward's physician or other medical care providers;
- (h) a guardian is required to:
 - (i) unless emergency conditions exist:
 - (A) file with the court a notice of the guardian's intent to move the ward; and
 - (B) serve the notice on all interested persons at least 10 days before the day on which the guardian moves the ward; or
 - (ii) take reasonable steps to:
 - (A) notify all interested persons of the guardian's intent to move the ward; and
 - (B) file the notice of the move with the court as soon as practicable following the

- 638 earlier of the move or the date when the guardian's intention to move the ward
639 is made known to the ward, the ward's care giver, or any other third party;
- 640 (i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or
641 prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives,
642 or friends;
- 643 (j) if no conservator for the estate of the ward has been appointed, a guardian may:
- 644 (i) institute proceedings to compel any person under a duty to support the ward or to
645 pay sums for the welfare of the ward to perform that duty;
- 646 (ii) compel the production of the ward's estate documents, including the ward's will,
647 trust, power of attorney, and any advance health care directive; and
- 648 (iii) receive money and tangible property deliverable to the ward and apply the
649 money and property for support, care, and education of the ward, except that:
- 650 (A) the guardian may not use funds from the ward's estate for room and board that
651 the guardian or the guardian's spouse, parent, or child have furnished the ward
652 unless a charge for the service is approved by order of the court made upon
653 notice to at least one adult relative in the nearest degree of kinship to the ward
654 in which there is an adult; and
- 655 (B) the guardian shall exercise care to conserve any excess for the ward's needs;
- 656 (k) if no conservator for the estate of the ward has been appointed:
- 657 (i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a
658 guardian shall send a report with a full accounting to the court on an annual basis;
659 or
- 660 (ii) for estates less than \$50,000 excluding the residence owned by the ward, a
661 guardian shall fill out an informal annual report and mail the report to the court;
- 662 (l) a guardian shall provide an annual accounting of the status of the ward, including a
663 report of the physical and mental condition of the ward, the ward's estate that has
664 been subject to the guardian's possession, the ward's place of residence and others
665 living in the same household, to the court in the petition or the annual report as
666 required under Subsection (2)(k); and
- 667 (m) a guardian shall comply with standards set by the National Guardianship
668 Association for guardians to the extent that the standards are applicable to the
669 guardian.
- 670 (3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person
671 required to receive notice in guardianship proceedings as described in Section 75-5-309.

- (4)(a) An accounting report under Subsection (2)(k) shall include a statement regarding:
- (i) all assets at the beginning and end of the reporting year;
 - (ii) any income received during the year;
 - (iii) any disbursements for the support of the ward;
 - (iv) any investments or trusts that are held for the ward's benefit;
 - (v) any expenditures or fees charged to the ward's estate; and
 - (vi) any other expenses incurred by the ward's estate.
- (b) The court may require additional information in an accounting report under Subsection (2)(k).
- (c) The Judicial Council shall approve forms for the accounting reports described in Subsection (2)(k).
- (d) An annual accounting report under Subsection (2)(k) shall be examined and approved by the court.
- (e) If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual accounting report under Subsection (2)(k).
- (f)(i) A corporate fiduciary is not required to petition the court, but shall submit the corporate fiduciary's internal report annually to the court.
- (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.
- (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an accounting of the status of a ward under Subsection (2)(l).
- (h) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection ~~[75-5-301.5(2)(t)]~~ 75-5-301.5(3)(l).
- (5) If a conservator has been appointed for a ward:
- (a) all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this chapter; and
 - (b) the guardian shall account to the conservator for funds expended.
- (6)(a) Any guardian of a person for whom a conservator has been appointed:
- (i) shall control the custody and care of the ward; and
 - (ii) is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.

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

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

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

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

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

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

(c) A penalty under this Subsection (7) shall be paid by the guardian and may not be paid by the ward or the ward's estate.

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

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

Section 7. Section **75-5-417** is amended to read:

75-5-417 . General duty of conservator.

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

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

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

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

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

(ii) any income received during the year;

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

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

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

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

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

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

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

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

(4) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection ~~[75-5-301.5(2)(t)]~~ 75-5-301.5(3)(l).

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

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

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

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

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

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

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

Section 8. Section **75-5-701** is enacted to read:

Part 7. Supported Decision-making Agreements

75-5-701 . Definitions.

As used in this part:

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

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

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

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

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

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

- 774 (7) "Neglect" means the same as that term is defined in Section 26B-6-201.
- 775 (8) "Principal" means an individual who:
- 776 (a) is 18 years old or older;
- 777 (b) has a disability, as that term is defined in Section 26B-6-801; and
- 778 (c) has entered into a supported decision-making agreement with at least one supporter.
- 779 (9) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec.
- 780 160.103.
- 781 (10)(a) "Solicit" means to ask, command, encourage, importune, urge, or request.
- 782 (b) "Solicit" does not include providing information, materials, resources, or education
- 783 materials to an individual.
- 784 (11) "Qualifying person" means a person who has a legal right to receive notice regarding,
- 785 or legal decision-making authority for, an individual seeking to enter into a supported
- 786 decision-making agreement, which may include:
- 787 (a) the agent for a power of attorney;
- 788 (b) the agent for an advance health care directive; or
- 789 (c) the personal representative of a will or the trustee of a trust.
- 790 (12) "Supported decision-making" means the process of supporting and accommodating an
- 791 individual in the decision-making process to make, communicate, and effectuate life
- 792 decisions, without impeding the self-determination of the individual.
- 793 (13) "Supported decision-making agreement" means an agreement between a principal and
- 794 at least one supporter, subject to the requirements described in Section 75-5-704.
- 795 (14) "Supporter" means an individual:
- 796 (a) who is 18 years old or older;
- 797 (b) who is not being paid to provide support to the principal, unless the individual is
- 798 receiving caregiver compensation through the Division of Services for People with
- 799 Disabilities or is a sibling of the principal who cares for the principal;
- 800 (c) who does not have any of the following:
- 801 (i) a substantiated allegation of abuse, neglect, or exploitation;
- 802 (ii) a protective or restraining order; or
- 803 (iii) a conviction for:
- 804 (A) harm of another;
- 805 (B) theft; or
- 806 (C) financial crime; and
- 807 (d) who has agreed to provide specified assistance to a principal by entering into a

808 supported decision-making agreement with the principal.

809 (15) "Undue influence" means the same as that term is defined in Section 26B-6-201.

810 Section 9. Section **75-5-702** is enacted to read:

811 **75-5-702 . Purposes of part.**

812 The purposes of this part are to:

813 (1) provide a principal assistance in:

814 (a) gathering and assessing information;

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

816 (c) communicating decisions for a principal if the principal wants assistance with
817 communicating decisions;

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

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

824 Section 10. Section **75-5-703** is enacted to read:

825 **75-5-703 . Interpretation of part.**

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

827 (1) a principal should be able to:

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

829 (b) make decisions about accepting or refusing support, assistance, or protection, as long
830 as doing so does not cause serious bodily injury, as that term is defined in Section
831 26B-5-301, to the principal, or harm to others;

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

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

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

839 Section 11. Section **75-5-704** is enacted to read:

840 **75-5-704 . Supported decision-making agreement.**

841 (1) Subject to Subsections (2) and (6), an individual may enter into a supported

842 decision-making agreement at any time if:

843 (a) the individual enters into the agreement voluntarily, without coercion or undue
844 influence, and without being solicited to enter into the agreement; and

845 (b) the individual understands the nature and effect of the agreement.

846 (2)(a) If the individual seeking to enter into a supported decision-making agreement has
847 a court-appointed guardian, court-appointed conservator, or qualifying person, the
848 guardian, conservator, or qualifying person shall be given:

849 (i) notice and an opportunity to participate in all discussions related to a proposed
850 supported decision-making agreement; and

851 (ii) 14 days to review a proposed supported decision-making agreement to determine
852 whether the proposed agreement includes an area over which the guardian,
853 conservator, or qualifying person has been granted legal decision-making
854 authority.

855 (b) If a guardian, conservator, or qualifying person determines, pursuant to Subsection
856 (2)(a), that a proposed supported decision-making agreement includes an area over
857 which the guardian, conservator, or qualifying person has been granted
858 decision-making authority:

859 (i) the supported decision-making agreement is not valid without the signature of the
860 guardian, conservator, or qualifying person; and

861 (ii) the proposed supported decision-making agreement shall describe how the
862 guardian, conservator, or qualifying person will be provided timely notice of and
863 an opportunity to participate in any discussion between parties to the supported
864 decision-making agreement that relate to an area over which the guardian,
865 conservator, or qualifying person has been granted legal decision-making
866 authority.

867 (c) If a guardian, conservator, or qualifying person described in Subsection (2)(a)
868 determines that a proposed supported decision-making agreement includes an area
869 over which the guardian, conservator, or other person has not been granted legal
870 decision-making authority, nothing in this part shall be construed to:

871 (i) require that the guardian, conservator, or qualifying person be excluded from any
872 discussion relating to that area; or

873 (ii) preclude the parties to the proposed supported decision-making agreement from
874 giving the guardian, conservator, or qualifying person notice and an opportunity to
875 participate in any discussion relating to that area.

- 876 (3) A supported decision-making agreement shall:
877 (a) be in writing;
878 (b) state the date on which the agreement is effective;
879 (c) designate at least one supporter;
880 (d) describe:
881 (i) how the principal uses supported decision-making to make decisions;
882 (ii) the rights of the principal;
883 (iii) the responsibilities of each supporter;
884 (iv) the decision-making supports and accommodations the principal chooses to
885 receive from each supporter;
886 (v) the types of decisions, if any, with which a supporter is not authorized to assist
887 the principal;
888 (e) include the ink or electronic signature of:
889 (i) the individual seeking to enter into the supported decision-making agreement;
890 (ii) each supporter;
891 (iii) a guardian, conservator, or qualifying person, if required under Subsection (2);
892 and
893 (iv)(A) two witnesses; or
894 (B) a notary public; and
895 (f) describe how any perceived or actual conflict of interest between a supporter and the
896 principal will be mitigated.
- 897 (4)(a) A supported decision-making agreement executed other than in this state is valid
898 in this state if, when the supported decision-making agreement was executed, the
899 execution complied with the law of the jurisdiction that determines the meaning and
900 effect of the supported decision-making agreement.
- 901 (b) The meaning and effect of a supported decision-making agreement is determined by
902 the law of the jurisdiction indicated in the supported decision-making agreement and,
903 in the absence of an indication of jurisdiction, by the law of the jurisdiction in which
904 the supported decision-making agreement was executed.
- 905 (5)(a) A supported decision-making agreement may include a release or other document
906 by which the principal authorizes a supporter to access the principal's confidential
907 information, subject to the terms of the supported decision-making agreement
908 described in Subsection (3) and the supporter's duties described in Section 75-5-705.
- 909 (b) Before a covered entity may share a principal's protected health information with a

supporter, the principal shall sign a HIPAA consent form authorizing release of the protected health information to the supporter.

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

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

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

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

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

(d) an attestation that the supporter:

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

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

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

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

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

(b) designate more than one supporter;

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

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

Section 12. Section **75-5-705** is enacted to read:

75-5-705 . Supporter duties.

(1) A supporter shall:

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

(b) act in good faith;

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

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

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

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

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

(i) kept confidential, as appropriate;

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

(iii) properly disposed of when appropriate.

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

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

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

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

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

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

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

(3) A supporter may not:

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

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

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

(d) without the principal's consent:

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

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

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

Section 13. Section **75-5-706** is enacted to read:

75-5-706 . Revocation -- Withdrawal.

- 978 (1) A principal may revoke a supported decision-making agreement at any time by
979 providing written notice to all other parties to the agreement.
- 980 (2) A supporter may withdraw from a supported decision-making agreement at any time by
981 providing written notice to all other parties to the agreement.
- 982 (3) A written notice of revocation or withdrawal under this section may be provided by
983 electronic means.

984 Section 14. Section **75-5-707** is enacted to read:

985 **75-5-707 . Termination.**

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

- 988 (1) the death of the principal;
- 989 (2) revocation by the principal pursuant to Section 75-5-706;
- 990 (3) as to a specific supporter, if the supporter is no longer qualified by reason of failure to
991 meet the requirements described in Subsection 75-5-701(14);
- 992 (4) withdrawal by all of the supporters pursuant to Section 75-5-706 without the
993 designation of a successor supporter;
- 994 (5) the principal's execution of a valid power of attorney, healthcare directive, or
995 declaration for mental health treatment, except to the extent the executed document
996 expressly continues, in whole or in part, the supported decision-making agreement; or
- 997 (6) a court's:
- 998 (a) determination that the principal does not have capacity to execute or consent to a
999 supported decision-making agreement; or
- 1000 (b) appointment of a temporary or permanent guardian or conservator, unless the court's
1001 order of appointment:
- 1002 (i) modifies but continues the supported decision-making agreement; and
- 1003 (ii) limits the powers and duties of the guardian.

1004 Section 15. Section **75-5-708** is enacted to read:

1005 **75-5-708 . Impact of supported decision-making agreement.**

- 1006 (1) A decision or request made or communicated by a principal with the assistance of a
1007 supporter in accordance with the terms of a supported decision-making agreement and
1008 this part shall, for the purposes of any provision of law, be recognized as the decision or
1009 request of the principal and may be enforced on the same basis as a decision or request
1010 of the principal without support.
- 1011 (2) The availability of a supported decision-making agreement does not limit the informal

use of supported decision making, or preclude judicial consideration of informal supported decision-making arrangements as a less restrictive alternative to a guardianship or conservatorship.

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

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

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

Section 16. Section **75-5-709** is enacted to read:

75-5-709 . Liability.

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

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

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

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

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

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

(4) A supporter who violates this part or the terms of a supported decision-making agreement is liable to the principal or the principal's successor in interest for the amount

1046 required to restore the value of the principal's property to what it would have been had
1047 the violation not occurred.

1048 (5) A transaction between a supporter and a principal that occurs while a supported
1049 decision-making agreement is in effect, or while the supporter is in a position of trust
1050 with the principal, and from which the supporter obtains a benefit or advantage, is
1051 voidable by the principal unless the supporter establishes that the transaction was fair to
1052 the principal.

1053 Section 17. **Effective date.**

1054 This bill takes effect on May 7, 2025.