

**Effective 5/7/2025**

**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.
- (7) "Neglect" means the same as that term is defined in Section 26B-6-201.
- (8) "Principal" means an individual who:
  - (a) is 18 years old or older;
  - (b) has a disability, as that term is defined in Section 26B-6-801; and
  - (c) has entered into a supported decision-making agreement with at least one supporter.
- (9) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- (10)
  - (a) "Solicit" means to ask, command, encourage, importune, urge, or request.
  - (b) "Solicit" does not include providing information, materials, resources, or education materials to an individual.
- (11) "Qualifying person" means a person who has a legal right to receive notice regarding, or legal decision-making authority for, an individual seeking to enter into a supported decision-making agreement, which may include:
  - (a) the agent for a power of attorney;
  - (b) the agent for an advance health care directive; or
  - (c) the personal representative of a will or the trustee of a trust.
- (12) "Supported decision-making" means the process of supporting and accommodating an individual in the decision-making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the individual.
- (13) "Supported decision-making agreement" means an agreement between a principal and at least one supporter, subject to the requirements described in Section 75-5-704.
- (14) "Supporter" means an individual:
  - (a) who is 18 years old or older;
  - (b) who is not being paid to provide support to the principal, unless the individual is receiving caregiver compensation through the Division of Services for People with Disabilities or is a sibling of the principal who cares for the principal;
  - (c) who does not have any of the following:
    - (i) a substantiated allegation of abuse, neglect, or exploitation;
    - (ii) a protective or restraining order; or
    - (iii) a conviction for:
      - (A) harm of another;
      - (B) theft; or

- (C) financial crime; and
  - (d) who has agreed to provide specified assistance to a principal by entering into a supported decision-making agreement with the principal.
- (15) "Undue influence" means the same as that term is defined in Section 26B-6-201.

Enacted by Chapter 533, 2025 General Session

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

The purposes of this part are to:

- (1) provide a principal assistance in:
  - (a) gathering and assessing information;
  - (b) understanding options, responsibilities, and consequences of a decision; and
  - (c) communicating decisions for a principal if the principal wants assistance with communicating decisions;
- (2) give a supporter legal status, as specified in a supported decision-making agreement, to be with a principal, to access information on behalf of a principal, and to participate in discussions with others when a principal is making decisions or seeking to obtain information; and
- (3) enable a supporter to assist in making and communicating decisions for a principal, but not to substitute as the decision maker for a principal.

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

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

- (1) a principal should be able to:
  - (a) live in the manner in which the principal wishes; and
  - (b) make decisions about accepting or refusing support, assistance, or protection, as long as doing so does not cause serious bodily injury, as that term is defined in Section 26B-5-301, to the principal, or harm to others;
- (2) a principal should be informed about and, to the best of the principal's abilities, participate in the management of the principal's affairs;
- (3) a principal should receive the most effective, yet least restrictive and intrusive, form of support, assistance, or protection when the principal is unable to manage the principal's affairs alone; and
- (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds should be respected in supporting the principal.

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

- (1) Subject to Subsections (2) and (6), an individual may enter into a supported decision-making agreement at any time if:
  - (a) the individual enters into the agreement voluntarily, without coercion or undue influence, and without being solicited to enter into the agreement; and
  - (b) the individual understands the nature and effect of the agreement.
- (2)

- (a) If the individual seeking to enter into a supported decision-making agreement has a court-appointed guardian, court-appointed conservator, or qualifying person, the guardian, conservator, or qualifying person shall be given:
  - (i) notice and an opportunity to participate in all discussions related to a proposed supported decision-making agreement; and
  - (ii) 14 days to review a proposed supported decision-making agreement to determine whether the proposed agreement includes an area over which the guardian, conservator, or qualifying person has been granted legal decision-making authority.
- (b) If a guardian, conservator, or qualifying person determines, pursuant to Subsection (2)(a), that a proposed supported decision-making agreement includes an area over which the guardian, conservator, or qualifying person has been granted decision-making authority:
  - (i) the supported decision-making agreement is not valid without the signature of the guardian, conservator, or qualifying person; and
  - (ii) the proposed supported decision-making agreement shall describe how the guardian, conservator, or qualifying person will be provided timely notice of and an opportunity to participate in any discussion between parties to the supported decision-making agreement that relate to an area over which the guardian, conservator, or qualifying person has been granted legal decision-making authority.
- (c) If a guardian, conservator, or qualifying person described in Subsection (2)(a) determines that a proposed supported decision-making agreement includes an area over which the guardian, conservator, or other person has not been granted legal decision-making authority, nothing in this part shall be construed to:
  - (i) require that the guardian, conservator, or qualifying person be excluded from any discussion relating to that area; or
  - (ii) preclude the parties to the proposed supported decision-making agreement from giving the guardian, conservator, or qualifying person notice and an opportunity to participate in any discussion relating to that area.
- (3) A supported decision-making agreement shall:
  - (a) be in writing;
  - (b) state the date on which the agreement is effective;
  - (c) designate at least one supporter;
  - (d) describe:
    - (i) how the principal uses supported decision-making to make decisions;
    - (ii) the rights of the principal;
    - (iii) the responsibilities of each supporter;
    - (iv) the decision-making supports and accommodations the principal chooses to receive from each supporter;
    - (v) the types of decisions, if any, with which a supporter is not authorized to assist the principal;
  - (e) include the ink or electronic signature of:
    - (i) the individual seeking to enter into the supported decision-making agreement;
    - (ii) each supporter;
    - (iii) a guardian, conservator, or qualifying person, if required under Subsection (2); and
    - (iv)
      - (A) two witnesses; or
      - (B) a notary public; and
  - (f) describe how any perceived or actual conflict of interest between a supporter and the principal will be mitigated.
- (4)

- (a) A supported decision-making agreement executed other than in this state is valid in this state if, when the supported decision-making agreement was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the supported decision-making agreement.
  - (b) The meaning and effect of a supported decision-making agreement is determined by the law of the jurisdiction indicated in the supported decision-making agreement and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported decision-making agreement was executed.
- (5)
- (a) A supported decision-making agreement may include a release or other document by which the principal authorizes a supporter to access the principal's confidential information, subject to the terms of the supported decision-making agreement described in Subsection (3) and the supporter's duties described in Section 75-5-705.
  - (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.

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**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.

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

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

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**75-5-707 Termination.**

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

- (1) the death of the principal;

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

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

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

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**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 required to restore the value of the principal's property to what it would have been had the violation not occurred.
- (5) A transaction between a supporter and a principal that occurs while a supported decision-making agreement is in effect, or while the supporter is in a position of trust with the principal, and from which the supporter obtains a benefit or advantage, is voidable by the principal unless the supporter establishes that the transaction was fair to the principal.

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