

Representative Marsha Judkins proposes the following substitute bill:

REQUIREMENTS FOR SUPPORTED DECISION-MAKING

AGREEMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses supported decision-making agreements.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prescribes the principles by which provisions related to supported decision-making agreements should be interpreted;
- ▶ describes the requirements for a supported decision-making agreement;
- ▶ 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
- ▶ provides a remedy for a principal against a supporter who violates a statute or the



26 terms of a supported decision-making agreement.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 [62A-5-601](#), Utah Code Annotated 1953

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37 [62A-5-605](#), Utah Code Annotated 1953

38 [62A-5-606](#), Utah Code Annotated 1953

39 [62A-5-607](#), Utah Code Annotated 1953

40 [62A-5-608](#), Utah Code Annotated 1953



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

43 Section 1. Section [62A-5-601](#) is enacted to read:

44 **Part 6. Supported Decision-making Agreements**

45 **62A-5-601. Definitions.**

46 As used in this part:

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

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

49 (3) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996,

50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.

51 (4) "Principal" means an individual who:

52 (a) is 18 years old or older;

53 (b) has a disability, as that term is defined in Section [62A-5b-102](#);

54 (c) is competent to enter into a contract; and

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

56 least one supporter.

57 (5) "Protected health information" means the same as that term is defined in 45 C.F.R.
58 Sec. 160.103.

59 (6) "Supported decision-making" means the process of supporting and accommodating
60 an individual in the decision-making process to make, communicate, and effectuate life
61 decisions, without impeding the self-determination of the individual.

62 (7) "Supported decision-making agreement" means an agreement between a principal
63 and at least one supporter that meets the requirements of Section [62A-5-603](#).

64 (8) "Supporter" means an individual who:

65 (a) is 18 years old or older; and

66 (b) has agreed to provide specified assistance to a principal by entering into a
67 supported decision-making agreement with the principal.

68 Section 2. Section **62A-5-602** is enacted to read:

69 **62A-5-602. Interpretation of chapter.**

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

71 (1) a principal should be able to:

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

73 (b) accept or refuse support, assistance, or protection, as long as the principal does not
74 harm others and is capable of making decisions about such matters;

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

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

80 (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds
81 should be respected in managing the principal's affairs.

82 Section 3. Section **62A-5-603** is enacted to read:

83 **62A-5-603. Supported decision-making agreement.**

84 (1) Subject to Subsection (6), a principal may enter into a supported decision-making
85 agreement at any time if the principal:

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

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

- 88 (2) A supported decision-making agreement shall:
89 (a) be in writing;
90 (b) state the date on which the agreement is effective;
91 (c) designate at least one supporter;
92 (d) describe:
93 (i) how the principal uses supported decision-making to make decisions;
94 (ii) the rights of the principal;
95 (iii) the responsibilities of each supporter;
96 (iv) the decision-making supports and accommodations the principal chooses to
97 receive from each supporter; and
98 (v) the types of decisions, if any, with which a supporter is not authorized to assist the
99 principal;
100 (e) include the notarized signature of the principal and each supporter, which signature
101 and notarization may be in electronic form; and
102 (f) describe how any perceived or actual conflict of interest between a supporter and
103 the principal will be mitigated.
104 (3) (a) A supported decision-making agreement may include a release or other
105 document by which the principal authorizes a supporter to access the principal's confidential
106 information, subject to the terms of the supported decision-making agreement described in
107 Subsection (2)(d) and the supporter's duties described in Section [62A-5-604](#).
108 (b) Before a covered entity may share a principal's protected health information with a
109 supporter, the principal shall sign a HIPAA consent form authorizing release of the protected
110 health information to the supporter.
111 (c) Nothing in this part shall be construed to alter or preempt the requirements for
112 protecting health information under HIPAA.
113 (4) Each supporter shall include with the supporter's signature:
114 (a) a description of the supporter's relationship to the principal;
115 (b) a statement of the supporter's willingness to act as a supporter;
116 (c) an acknowledgment of the supporter's duties; and
117 (d) an attestation that the supporter:
118 (i) agrees to honor the right of the principal to make decisions; and

- 119 (ii) will not make decisions for the principal, including health care decisions.
- 120 (5) A supported decision-making agreement may do one or more of the following:
- 121 (a) designate more than one supporter;
- 122 (b) designate an alternate individual to act in the place of a supporter under
- 123 circumstances specified in the supported decision-making agreement; or
- 124 (c) authorize a supporter to share information with another supporter or other
- 125 individual named in the supported decision-making agreement.
- 126 (6) (a) A principal may not enter into a supported decision-making agreement if the
- 127 agreement encroaches on the authority of a guardian or conservator of the principal, unless, in
- 128 writing, the guardian or conservator approves of the adult entering into the supported
- 129 decision-making agreement.
- 130 (b) A guardian or conservator may not, without good cause, prevent a principal from
- 131 entering into a supported decision-making agreement that does not encroach on the authority of
- 132 the guardian or conservator.
- 133 Section 4. Section **62A-5-604** is enacted to read:
- 134 **62A-5-604. Supporter duties.**
- 135 (1) A supporter shall:
- 136 (a) act with the care, competence, and diligence ordinarily exercised by individuals in
- 137 similar circumstances, and in accordance with the supporter's skills or expertise;
- 138 (b) act in good faith;
- 139 (c) comply with the terms of the supported decision-making agreement;
- 140 (d) maintain records, which the supporter shall make available to the principal upon
- 141 request, concerning:
- 142 (i) the supporter's actions under the supported decision-making agreement; and
- 143 (ii) how the principal communicates and expresses opinions to the supporter; and
- 144 (e) ensure that all information collected on behalf of a principal pursuant to a supported
- 145 decision-making agreement and this section is:
- 146 (i) kept privileged and confidential, as appropriate;
- 147 (ii) not subject to unauthorized access, use, or disclosure; and
- 148 (iii) properly disposed of when appropriate.
- 149 (2) Except as otherwise provided in the supported decision-making agreement or

150 Subsection (3), a supporter may, as directed by the principal:

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

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

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

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

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

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

166 (3) A supporter may not:

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

169 (b) without the principal's consent:

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

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

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

178 (d) make health care decisions for the principal.

179 Section 5. Section **62A-5-605** is enacted to read:

180 **62A-5-605. Revocation -- Withdrawal.**

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

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

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

187 Section 6. Section **62A-5-606** is enacted to read:

188 **62A-5-606. Termination.**

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

191 (1) the death of the principal;

192 (2) a revocation by the principal pursuant to Section [62A-5-605](#); or

193 (3) a withdrawal by all of the supporters pursuant to Section [62A-5-605](#) without the
194 designation of a successor supporter.

195 Section 7. Section **62A-5-607** is enacted to read:

196 **62A-5-607. Impact of supported decision-making agreement.**

197 (1) A decision or request made or communicated by a principal with the assistance of a
198 supporter in accordance with the terms of a supported decision-making agreement and this part
199 shall, for the purposes of any provision of law, be recognized as the decision or request of the
200 principal, and may be enforced on the same basis as a decision or request of the principal.

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

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

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

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

211 Section 8. Section **62A-5-608** is enacted to read:

212 62A-5-608. Liability.

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

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

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

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

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

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