

HB0510S01 compared with HB0510

~~text~~ shows text that was in HB0510 but was deleted in HB0510S01.

text shows text that was not in HB0510 but was inserted into HB0510S01.

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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;

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- ▶ 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;~~{ and }~~
- ▶ 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 terms of a supported decision-making agreement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

62A-5-601, Utah Code Annotated 1953

62A-5-602, Utah Code Annotated 1953

62A-5-603, Utah Code Annotated 1953

62A-5-604, Utah Code Annotated 1953

62A-5-605, Utah Code Annotated 1953

62A-5-606, Utah Code Annotated 1953

62A-5-607, Utah Code Annotated 1953

62A-5-608, Utah Code Annotated 1953

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

Section 1. Section **62A-5-601** is enacted to read:

Part 6. Supported Decision-making Agreements

62A-5-601. Definitions.

As used in this part:

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

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

~~(2)3~~ (3) "HIPAA" means the Health Insurance Portability and Accountability Act of

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1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

(~~3~~4) "Principal" means an individual who:

(a) is 18 years old or older;

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

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

(d) seeks to enter or has entered into a supported decision-making agreement with at least one supporter.

(~~4~~5) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(~~5~~6) "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.

(~~6~~7) "Supported decision-making agreement" means an agreement between a principal and at least one supporter that meets the requirements of Section 62A-5-603.

(~~7~~8) "Supporter" means an individual who:

(a) is 18 years old or older; and

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

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

62A-5-602. Interpretation of chapter.

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

(2) a principal should be able to 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

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should be respected in managing the principal's affairs.

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

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

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

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

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

(2) 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; and

(v) the types of decisions, if any, with which a supporter is not authorized to assist the principal;

(e) include the notarized signature of the principal and each supporter, which signature and notarization may be in electronic form; and

(f) describe how any perceived or actual conflict of interest between a supporter and the principal will be mitigated.

(3) (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 (2)(d) and the supporter's duties described in Section 62A-5-604.

(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

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protecting health information under HIPAA.

(4) 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; and

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

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

(a) designate more than one supporter;

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

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

(6) (a) A principal may not enter into a supported decision-making agreement if the agreement encroaches on the authority of a guardian or conservator of the principal, unless, in writing, the guardian or conservator approves of the adult entering into the supported decision-making agreement.

(b) A guardian or conservator may not, without good cause, prevent a principal from entering into a supported decision-making agreement that does not encroach on the authority of the guardian or conservator.

Section 4. Section **62A-5-604** is enacted to read:

62A-5-604. 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;

(~~b~~)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

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(ii) how the principal communicates and expresses opinions to the supporter; and
(fct)e) ensure that all information collected on behalf of a principal pursuant to a supported decision-making agreement and this section is:

- (i) kept privileged and 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) 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; or

(ii) use information acquired in connection with the supported decision-making

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agreement for a purpose other than supporting or assisting the principal pursuant to the supported decision-making agreement;

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

(d) make health care decisions for the principal.

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

62A-5-605. 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.

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

62A-5-606. 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) a revocation by the principal pursuant to Section 62A-5-605; or

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

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

62A-5-607. 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.

(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.

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(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 a principal's execution of a supported decision-making agreement as evidence of the principal'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 8. Section **62A-5-608** is enacted to read:

62A-5-608. Liability.

~~{~~ (1) As used in this section, "good faith" means honesty in fact in the conduct or transaction concerned.

~~}~~ (~~1~~2) 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 contained in a supported decision-making agreement, or for following the direction of a supporter given in accordance with the supported decision-making agreement.

(~~1~~2) The provisions of this part may not be construed to affect mandatory reporting obligations related to abuse, neglect, or exploitation.

(3) 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.