

1 **REQUIREMENTS FOR SUPPORTED DECISION-MAKING**

2 **AGREEMENTS**

3 2024 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Marsha Judkins**

6 Senate Sponsor: Wayne A. Harper

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses supported decision-making agreements.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ prescribes the principles by which provisions related to supported decision-making
- 15 agreements should be interpreted;
- 16 ▶ describes the requirements for a supported decision-making agreement;
- 17 ▶ describes the duties of an individual who is a supporter under a supported
- 18 decision-making agreement;
- 19 ▶ provides that a supported decision-making agreement may be revoked or
- 20 terminated, with certain conditions;
- 21 ▶ describes how a supported decision-making agreement interacts with and affects
- 22 other laws and principles; and
- 23 ▶ provides protections for a person who relies, in good faith, on the provisions of a
- 24 supported decision-making agreement.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364

32 ENACTS:

33 **75-5-701**, Utah Code Annotated 1953

34 **75-5-702**, Utah Code Annotated 1953

35 **75-5-703**, Utah Code Annotated 1953

36 **75-5-704**, Utah Code Annotated 1953

37 **75-5-705**, Utah Code Annotated 1953

38 **75-5-706**, Utah Code Annotated 1953

39 **75-5-707**, Utah Code Annotated 1953

40 **75-5-708**, Utah Code Annotated 1953

41 **75-5-709**, Utah Code Annotated 1953



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

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

45 **75-1-201. General definitions.**

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

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

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

55 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
56 present or future interest, vested or contingent, and also includes the owner of an interest by
57 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to
58 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a

59 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
60 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
61 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
62 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
63 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
64 appointment, and a person in whose favor a power of attorney or a power held in any
65 individual, fiduciary, or representative capacity is exercised.

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

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

73 (6) "Claims," in respect to estates of decedents and protected persons, includes
74 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
75 and liabilities of the estate which arise at or after the death of the decedent or after the
76 appointment of a conservator, including funeral expenses and expenses of administration.
77 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of
78 a decedent or protected person to specific assets alleged to be included in the estate.

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

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

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

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

89 (11) "Devisee" means any person designated in a will to receive a devise. For the

90 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to
91 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
92 devisee, and the beneficiaries are not devisees.

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

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

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

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

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

107 (17) "Foreign personal representative" means a personal representative of another
108 jurisdiction.

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

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

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

119 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the
120 surviving spouse and state, who are entitled under the statutes of intestate succession to the

121 property of a decedent.

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

127 (a) receive and evaluate information;

128 (b) make and communicate decisions; or

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

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

133 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,
134 beneficiaries, and any others having a property right in or claim against a trust estate or the
135 estate of a decedent, ward, or protected person. It also includes persons having priority for
136 appointment as personal representative, other fiduciaries representing interested persons, a
137 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
138 incapacitated. The meaning as it relates to particular persons may vary from time to time and
139 shall be determined according to the particular purposes of, and matter involved in, any
140 proceeding.

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

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

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

148 (28) "Letters" includes letters testamentary, letters of guardianship, letters of
149 administration, and letters of conservatorship.

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

151 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property

152 is used as security.

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

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

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

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

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

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

169 (b) "General personal representative" excludes special administrator.

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

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

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

174 (40) "Protected person" means a person for whom a conservator has been appointed. A
175 "minor protected person" means a minor for whom a conservator has been appointed because
176 of minority.

177 (41) "Protective proceeding" means a proceeding described in Section [75-5-401](#).

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

180 (43) "Registrar" refers to the official of the court designated to perform the functions of
181 registrar as provided in Section [75-1-307](#).

182 (44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of

183 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in
184 payments out of production under such a title or lease, collateral trust certificate, transferable
185 share, voting trust certificate, and, in general, any interest or instrument commonly known as a
186 security, or any certificate of interest or participation, any temporary or interim certificate,
187 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
188 the foregoing.

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

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

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

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

196 (47) "Special administrator" means a personal representative as described in Sections
197 [75-3-614](#) through [75-3-618](#).

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

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

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

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

209 (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
210 Registration Act, means that an individual has neither predeceased an event, including the
211 death of another individual, nor is considered to have predeceased an event under Section
212 [75-2-104](#) or [75-2-702](#). The term includes its derivatives, such as "survives," "survived,"
213 "survivor," and "surviving."

214 (53) "Testacy proceeding" means a proceeding to establish a will or determine
215 intestacy.

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

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

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

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

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

237 Section 2. Section **75-5-701** is enacted to read:

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

239 **75-5-701. Definitions.**

240 As used in this part:

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

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

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

- 245 (4) "Exploitation" means the same as that term is defined in Section [26B-6-201](#).
- 246 (5) "Good faith" means honesty in fact in the conduct or transaction concerned.
- 247 (6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996,
- 248 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.
- 249 (7) "Neglect" means the same as that term is defined in Section [26B-6-201](#).
- 250 (8) "Principal" means an individual who:
- 251 (a) is 18 years old or older;
- 252 (b) has a disability, as that term is defined in Section [26B-6-801](#);
- 253 (c) seeks to enter or has entered into a supported decision-making agreement with at
- 254 least one supporter; and
- 255 (d) has the permission of the individual's guardian or conservator to enter into a
- 256 supported decision-making agreement, if the supported decision-making agreement includes an
- 257 area over which a court has granted authority to the guardian or conservator.
- 258 (9) "Protected health information" means the same as that term is defined in 45 C.F.R.
- 259 Sec. 160.103.
- 260 (10) "Supported decision-making" means the process of supporting and
- 261 accommodating an individual in the decision-making process to make, communicate, and
- 262 effectuate life decisions, without impeding the self-determination of the individual.
- 263 (11) "Supported decision-making agreement" means an agreement between a principal
- 264 and at least one supporter that meets the requirements of Section [75-5-704](#).
- 265 (12) "Supporter" means an individual:
- 266 (a) who is 18 years old or older;
- 267 (b) without:
- 268 (i) a substantiated allegation of abuse, neglect, or exploitation;
- 269 (ii) a protective or restraining order; or
- 270 (iii) a conviction for:
- 271 (A) harm of another;
- 272 (B) theft; or
- 273 (C) financial crime; and
- 274 (c) who has agreed to provide specified assistance to a principal by entering into a
- 275 supported decision-making agreement with the principal.

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

277 Section 3. Section **75-5-702** is enacted to read:

278 **75-5-702. Purposes of part.**

279 The purposes of this part are to:

280 (1) provide a principal assistance in:

281 (a) gathering and assessing information;

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

283 (c) communicating decisions for a principal if the principal wants assistance with

284 communicating decisions;

285 (2) give a supporter legal status, as specified in a supported decision-making

286 agreement, to be with a principal, to access information on behalf of a principal, and to

287 participate in discussions with others when a principal is making decisions or seeking to obtain

288 information; and

289 (3) enable a supporter to assist in making and communicating decisions for a principal,

290 but not to substitute as the decision maker for a principal.

291 Section 4. Section **75-5-703** is enacted to read:

292 **75-5-703. Interpretation of part.**

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

294 (1) a principal should be able to:

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

296 (b) make decisions about accepting or refusing support, assistance, or protection, as

297 long as doing so does not cause serious bodily injury, as that term is defined in Section

298 [26B-5-301](#), to the principal, or harm to others;

299 (2) a principal should be informed about and, to the best of the principal's abilities,

300 participate in the management of the principal's affairs;

301 (3) a principal should receive the most effective, yet least restrictive and intrusive,

302 form of support, assistance, or protection when the principal is unable to manage the principal's

303 affairs alone; and

304 (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds

305 should be respected in supporting the principal.

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

307 75-5-704. Supported decision-making agreement.
308 (1) Subject to Subsection (7), a principal may enter into a supported decision-making
309 agreement at any time if the principal:
310 (a) enters into the agreement voluntarily and without coercion or undue influence; and
311 (b) understands the nature and effect of the agreement.
312 (2) A principal is presumed to understand the nature and effect of a supported
313 decision-making agreement unless the supported decision-making agreement involves an area
314 over which a court has granted authority to a guardian or conservator.
315 (3) A supported decision-making agreement shall:
316 (a) be in writing;
317 (b) state the date on which the agreement is effective;
318 (c) designate at least one supporter;
319 (d) describe:
320 (i) how the principal uses supported decision-making to make decisions;
321 (ii) the rights of the principal;
322 (iii) the responsibilities of each supporter;
323 (iv) the decision-making supports and accommodations the principal chooses to
324 receive from each supporter; and
325 (v) the types of decisions, if any, with which a supporter is not authorized to assist the
326 principal;
327 (e) include the ink or electronic signature of:
328 (i) the principal;
329 (ii) each supporter;
330 (iii) a guardian or conservator, if required under Subsection [75-5-701\(4\)\(d\)](#); and
331 (iv) (A) two witnesses; or
332 (B) a notary public; and
333 (f) describe how any perceived or actual conflict of interest between a supporter and
334 the principal will be mitigated.
335 (4) (a) A supported decision-making agreement executed other than in this state is
336 valid in this state if, when the supported decision-making agreement was executed, the
337 execution complied with the law of the jurisdiction that determines the meaning and effect of

338 the supported decision-making agreement.

339 (b) The meaning and effect of a supported decision-making agreement is determined by
340 the law of the jurisdiction indicated in the supported decision-making agreement and, in the
341 absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported
342 decision-making agreement was executed.

343 (5) (a) A supported decision-making agreement may include a release or other
344 document by which the principal authorizes a supporter to access the principal's confidential
345 information, subject to the terms of the supported decision-making agreement described in
346 Subsection (2)(d) and the supporter's duties described in Section 75-5-705.

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

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

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

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

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

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

356 (d) an attestation that the supporter:

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

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

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

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

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

362 (b) designate more than one supporter;

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

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

367 Section 6. Section 75-5-705 is enacted to read:

368 **75-5-705. Supporter duties.**

- 369 (1) A supporter shall:
- 370 (a) act with the care, competence, and diligence ordinarily exercised by individuals in
371 similar circumstances, and in accordance with the supporter's skills or expertise;
- 372 (b) act in good faith;
- 373 (c) comply with the terms of the supported decision-making agreement;
- 374 (d) maintain records, which the supporter shall make available to the principal upon
375 request, concerning:
- 376 (i) the supporter's actions under the supported decision-making agreement; and
377 (ii) how the principal communicates and expresses opinions to the supporter; and
378 (e) ensure that all information collected on behalf of the principal pursuant to the
379 supported decision-making agreement and this section is:
- 380 (i) kept confidential, as appropriate;
381 (ii) not subject to unauthorized access, use, or disclosure; and
382 (iii) properly disposed of when appropriate.
- 383 (2) Except as otherwise provided in the supported decision-making agreement or
384 Subsection (3), a supporter may, as directed by the principal:
- 385 (a) assist the principal in understanding information, options, responsibilities, and
386 consequences of the principal's life decisions, including decisions relating to the principal's
387 affairs or supportive services;
- 388 (b) help the principal access, obtain, and understand information that is relevant to a
389 life decision, including medical, psychological, financial, or educational decisions, or any
390 treatment records or records related to the management of the principal's affairs or supportive
391 services;
- 392 (c) assist the principal with finding, obtaining, and making appointments for supportive
393 services, and implement the principal's plans for supportive services;
- 394 (d) help the principal monitor information about the principal's affairs or supportive
395 services, including tracking future necessary or recommended services;
- 396 (e) ascertain the wishes and decisions of the principal, assist in communicating those
397 wishes and decisions to others, and advocate to ensure that the wishes and decisions of the
398 principal are implemented; or
- 399 (f) assist the principal with obtaining information to which the principal is entitled.

400 (3) A supporter may not:

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

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

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

406 (d) without the principal's consent:

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

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

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

414 Section 7. Section **75-5-706** is enacted to read:

415 **75-5-706. Revocation -- Withdrawal.**

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

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

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

422 Section 8. Section **75-5-707** is enacted to read:

423 **75-5-707. Termination.**

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

426 (1) the death of the principal;

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

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

430 (4) withdrawal by all of the supporters pursuant to Section [75-5-706](#) without the

431 designation of a successor supporter;

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

435 (6) a court's:

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

438 (b) appointment of a temporary or permanent guardian or conservator, unless the
439 court's order of appointment:

440 (i) modifies but continues the supported decision-making agreement; and

441 (ii) limits the powers and duties of the guardian.

442 Section 9. Section **75-5-708** is enacted to read:

443 **75-5-708. Impact of supported decision-making agreement.**

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

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

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

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

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

459 Section 10. Section **75-5-709** is enacted to read:

460 **75-5-709. Liability.**

461 (1) A person who is not a party to a supported decision-making agreement, including a

462 provider of health care or financial services, that in good faith accepts or relies upon a
463 supported decision-making agreement:

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

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

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

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

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

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

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

488 Section 11. **Effective date.**

489 This bill takes effect on May 1, 2024.