

Representative Marsha Judkins proposes the following substitute bill:

REQUIREMENTS FOR SUPPORTED DECISION-MAKING

AGREEMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses supported decision-making agreements and guardianship.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions concerning the rights of certain individuals who are under a court-ordered guardianship;
- ▶ 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 an individual's guardian or conservator if the supported decision-making agreement includes an area over which a court has granted authority to the guardian or conservator;
- ▶ 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



26 terminated, with certain conditions;
 27 ▶ describes how a supported decision-making agreement interacts with and affects
 28 other laws and principles; and
 29 ▶ provides protections for a person who relies, in good faith, on the provisions of a
 30 supported decision-making agreement.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **75-1-201**, as last amended by Laws of Utah 2013, Chapter 364

38 **75-5-301.5**, as enacted by Laws of Utah 2022, Chapter 358 and last amended by
 39 Coordination Clause, Laws of Utah 2022, Chapter 358

40 ENACTS:

41 **75-5-701**, Utah Code Annotated 1953

42 **75-5-702**, Utah Code Annotated 1953

43 **75-5-703**, Utah Code Annotated 1953

44 **75-5-704**, Utah Code Annotated 1953

45 **75-5-705**, Utah Code Annotated 1953

46 **75-5-706**, Utah Code Annotated 1953

47 **75-5-707**, Utah Code Annotated 1953

48 **75-5-708**, Utah Code Annotated 1953

49 **75-5-709**, Utah Code Annotated 1953

50

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

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

53 **75-1-201. General definitions.**

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

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

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

63 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
64 present or future interest, vested or contingent, and also includes the owner of an interest by
65 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to
66 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a
67 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
68 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
69 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
70 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
71 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
72 appointment, and a person in whose favor a power of attorney or a power held in any
73 individual, fiduciary, or representative capacity is exercised.

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

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

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

87 (7) "Conservator" means a person who is appointed by a court to manage the estate of a

88 protected person.

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

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

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

97 (11) "Devisee" means any person designated in a will to receive a devise. For the
98 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to
99 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
100 devisee, and the beneficiaries are not devisees.

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

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

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

112 (15) "Exempt property" means that property of a decedent's estate which is described in
113 Section [75-2-403](#).

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

115 (17) "Foreign personal representative" means a personal representative of another
116 jurisdiction.

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

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

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

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

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

- 135 (a) receive and evaluate information;
136 (b) make and communicate decisions; or
137 (c) provide for necessities such as food, shelter, clothing, health care, or safety.

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

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

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

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

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

156 (28) "Letters" includes letters testamentary, letters of guardianship, letters of
157 administration, and letters of conservatorship.

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

159 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property
160 is used as security.

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

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

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

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

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

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

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

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

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

180 (39) "Property" includes both real and personal property or any interest therein and

181 means anything that may be the subject of ownership.

182 (40) "Protected person" means a person for whom a conservator has been appointed. A
183 "minor protected person" means a minor for whom a conservator has been appointed because
184 of minority.

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

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

188 (43) "Registrar" refers to the official of the court designated to perform the functions of
189 registrar as provided in Section 75-1-307.

190 (44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
191 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in
192 payments out of production under such a title or lease, collateral trust certificate, transferable
193 share, voting trust certificate, and, in general, any interest or instrument commonly known as a
194 security, or any certificate of interest or participation, any temporary or interim certificate,
195 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
196 the foregoing.

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

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

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

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

204 (47) "Special administrator" means a personal representative as described in Sections
205 75-3-614 through 75-3-618.

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

210 (49) "Successor personal representative" means a personal representative, other than a
211 special administrator, who is appointed to succeed a previously appointed personal

212 representative.

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

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

217 (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
218 Registration Act, means that an individual has neither predeceased an event, including the
219 death of another individual, nor is considered to have predeceased an event under Section
220 [75-2-104](#) or [75-2-702](#). The term includes its derivatives, such as "survives," "survived,"
221 "survivor," and "surviving."

222 (53) "Testacy proceeding" means a proceeding to establish a will or determine
223 intestacy.

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

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

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

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

241 (58) "Will" includes codicil and any testamentary instrument which merely appoints an
242 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits

243 the right of an individual or class to succeed to property of the decedent passing by intestate
244 succession.

245 Section 2. Section **75-5-301.5** is amended to read:

246 **75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an**
247 **incapacitated person.**

248 (1) Except as otherwise provided by this chapter or any other law, including Subsection
249 75-5-312(1)(c)(i), a person alleged to be incapacitated has the right to:

250 (a) be represented by counsel before a guardianship is imposed and have counsel
251 represent the person during the guardianship proceeding;

252 (b) receive a copy of all documents filed in a guardianship proceeding;

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

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

256 (e) be treated with respect and dignity.

257 (2) Except as otherwise provided by this chapter or any other law, and except as
258 provided in Subsection (5), an incapacitated person for whom a guardian is appointed has right
259 to:

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

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

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

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

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

268 (f) participate in developing an individualized plan for the incapacitated person's care,
269 including:

270 (i) managing the incapacitated person's assets and property;

271 (ii) determining the incapacitated person's residence; and

272 (iii) determining the services to be received by the incapacitated person;

273 (g) be given consideration in regards to the incapacitated person's current and

274 previously stated desires, preferences for health care and medical treatment, and religious and
275 moral beliefs;

276 (h) remain as independent as possible, including giving deference to the incapacitated
277 person's preference for the incapacitated person's residence and standard of living:

278 (i) as expressed or demonstrated before a determination of capacity was made; or

279 (ii) as currently expressed or demonstrated by the incapacitated person if the preference
280 is reasonable under the circumstances;

281 (i) be granted the greatest degree of freedom possible that is consistent with the reasons
282 for the guardianship;

283 (j) be able to exercise control over all aspects of the incapacitated person's life that are
284 not granted to the guardian in the order of appointment;

285 (k) engage in any activity that the court has not expressly reserved for the guardian,
286 including marriage or domestic partnership, traveling, working, or having a driver license;

287 (l) be treated with respect and dignity;

288 (m) be treated fairly by the incapacitated person's guardian;

289 (n) maintain privacy and confidentiality in personal matters, except as needed by the
290 incapacitated person's guardian to conduct necessary affairs for the incapacitated person;

291 (o) receive telephone calls and personal mail and associate with relatives and
292 acquaintances unless the guardian and the court determine that the association should be
293 restricted or prohibited in accordance with Section 75-5-312.5;

294 (p) receive timely, effective, and appropriate health care and medical treatment that
295 does not violate the incapacitated person's rights;

296 (q) have all services provided by a guardian at a reasonable rate of compensation;

297 (r) have a court review any request for payment by a guardian to avoid excessive or
298 unnecessary fees or duplicative billing;

299 (s) receive prudent financial management of the incapacitated person's property;

300 (t) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the exception
301 provided in Subsection 75-5-312(7)(d), receive a copy of an accounting report regarding the
302 incapacitated person's estate that is submitted to the court by the guardian under Section
303 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for the
304 incapacitated person;

- 305 (u) receive and control the incapacitated person's salary;
- 306 (v) maintain a bank account and manage the incapacitated person's personal money;
- 307 and
- 308 (w) ask the court to:
- 309 (i) review the management activity of a guardian if a dispute cannot be resolved
- 310 regarding the guardian's management;
- 311 (ii) continue to review the need for a guardianship or to modify or terminate a
- 312 guardianship; and
- 313 (iii) enter an order restoring the incapacitated person's capacity at the earliest possible
- 314 time.
- 315 (3) The rights of an incapacitated person under this section do not abrogate any remedy
- 316 provided by law.

317 (4) Any right described in this section may be:

- 318 (a) addressed in a guardianship proceeding; or
- 319 (b) enforced through a private cause of action.

320 (5) Subsections (2)(h), (j), (k), (u), and (v) do not apply to an individual who:

- 321 (a) before October 1, 2024, was under a court-ordered full guardianship; and
- 322 (b) has a severe intellectual disability and significant limitations in adaptive behavior.

323 Section 3. Section **75-5-701** is enacted to read:

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

325 **75-5-701. Definitions.**

326 As used in this part:

- 327 (1) "Abuse" means the same as that term is defined in Section [26B-6-201](#).
- 328 (2) "Coercion" means influencing or attempting to influence a principal using force,
- 329 threats, or intimidation.
- 330 (3) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 331 (4) "Exploitation" means the same as that term is defined in Section [26B-6-201](#).
- 332 (5) "Good faith" means honesty in fact in the conduct or transaction concerned.
- 333 (6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996,
- 334 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.
- 335 (7) "Neglect" means the same as that term is defined in Section [26B-6-201](#).

336 (8) "Principal" means an individual who:

337 (a) is 18 years old or older;

338 (b) has a disability, as that term is defined in Section [26B-6-801](#);

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

340 least one supporter; and

341 (d) has the permission of the individual's guardian or conservator to enter into a

342 supported decision-making agreement, if the supported decision-making agreement includes an

343 area over which a court has granted authority to the guardian or conservator.

344 (9) "Protected health information" means the same as that term is defined in 45 C.F.R.

345 Sec. 160.103.

346 (10) "Supported decision-making" means the process of supporting and

347 accommodating an individual in the decision-making process to make, communicate, and

348 effectuate life decisions, without impeding the self-determination of the individual.

349 (11) "Supported decision-making agreement" means an agreement between a principal

350 and at least one supporter that meets the requirements of Section [75-5-704](#).

351 (12) "Supporter" means an individual:

352 (a) who is 18 years old or older;

353 (b) without:

354 (i) a substantiated allegation of abuse, neglect, or exploitation;

355 (ii) a protective or restraining order; or

356 (iii) a conviction for:

357 (A) harm of another;

358 (B) theft; or

359 (C) financial crime; and

360 (c) who has agreed to provide specified assistance to a principal by entering into a

361 supported decision-making agreement with the principal.

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

363 Section 4. Section **75-5-702** is enacted to read:

364 **75-5-702. Purposes of part.**

365 The purposes of this part are to:

366 (1) provide a principal assistance in:

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

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

378 **75-5-703. Interpretation of part.**

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

- 380 (1) a principal should be able to:
- 381 (a) live in the manner in which the principal wishes; and
- 382 (b) make decisions about accepting or refusing support, assistance, or protection, as
- 383 long as doing so does not cause serious bodily injury, as that term is defined in Section
- 384 [26B-5-301](#), to the principal, or harm to others;
- 385 (2) a principal should be informed about and, to the best of the principal's abilities,
- 386 participate in the management of the principal's affairs;
- 387 (3) a principal should receive the most effective, yet least restrictive and intrusive,
- 388 form of support, assistance, or protection when the principal is unable to manage the principal's
- 389 affairs alone; and
- 390 (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds
- 391 should be respected in supporting the principal.

392 Section 6. Section **75-5-704** is enacted to read:

393 **75-5-704. Supported decision-making agreement.**

- 394 (1) Subject to Subsection (6), a principal may enter into a supported decision-making
- 395 agreement at any time if the principal:
- 396 (a) enters into the agreement voluntarily and without coercion or undue influence; and
- 397 (b) understands the nature and effect of the agreement.

- 398 (2) A supported decision-making agreement shall:
399 (a) be in writing;
400 (b) state the date on which the agreement is effective;
401 (c) designate at least one supporter;
402 (d) describe:
403 (i) how the principal uses supported decision-making to make decisions;
404 (ii) the rights of the principal;
405 (iii) the responsibilities of each supporter;
406 (iv) the decision-making supports and accommodations the principal chooses to
407 receive from each supporter; and
408 (v) the types of decisions, if any, with which a supporter is not authorized to assist the
409 principal;
410 (e) include the ink or electronic signature of:
411 (i) the principal;
412 (ii) each supporter;
413 (iii) a guardian or conservator, if required under Subsection [75-5-701\(8\)\(d\)](#); and
414 (iv) (A) two witnesses; or
415 (B) a notary public; and
416 (f) describe how any perceived or actual conflict of interest between a supporter and
417 the principal will be mitigated.
418 (3) (a) A supported decision-making agreement executed other than in this state is
419 valid in this state if, when the supported decision-making agreement was executed, the
420 execution complied with the law of the jurisdiction that determines the meaning and effect of
421 the supported decision-making agreement.
422 (b) The meaning and effect of a supported decision-making agreement is determined by
423 the law of the jurisdiction indicated in the supported decision-making agreement and, in the
424 absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported
425 decision-making agreement was executed.
426 (4) (a) A supported decision-making agreement may include a release or other
427 document by which the principal authorizes a supporter to access the principal's confidential
428 information, subject to the terms of the supported decision-making agreement described in

429 Subsection (2)(d) and the supporter's duties described in Section 75-5-705.

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

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

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

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

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

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

439 (d) an attestation that the supporter:

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

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

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

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

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

445 (b) designate more than one supporter;

446 (c) designate an alternate individual to act in the place of a supporter under

447 circumstances specified in the supported decision-making agreement; or

448 (d) authorize a supporter to share information with another supporter or other

449 individual named in the supported decision-making agreement.

450 Section 7. Section **75-5-705** is enacted to read:

451 **75-5-705. Supporter duties.**

452 (1) A supporter shall:

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

455 (b) act in good faith;

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

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

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

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

461 (e) ensure that all information collected on behalf of the principal pursuant to the

462 supported decision-making agreement and this section is:

463 (i) kept confidential, as appropriate;

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

465 (iii) properly disposed of when appropriate.

466 (2) Except as otherwise provided in the supported decision-making agreement or

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

468 (a) assist the principal in understanding information, options, responsibilities, and

469 consequences of the principal's life decisions, including decisions relating to the principal's

470 affairs or supportive services;

471 (b) help the principal access, obtain, and understand information that is relevant to a

472 life decision, including medical, psychological, financial, or educational decisions, or any

473 treatment records or records related to the management of the principal's affairs or supportive

474 services;

475 (c) assist the principal with finding, obtaining, and making appointments for supportive

476 services, and implement the principal's plans for supportive services;

477 (d) help the principal monitor information about the principal's affairs or supportive

478 services, including tracking future necessary or recommended services;

479 (e) ascertain the wishes and decisions of the principal, assist in communicating those

480 wishes and decisions to others, and advocate to ensure that the wishes and decisions of the

481 principal are implemented; or

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

483 (3) A supporter may not:

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

485 principal;

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

487 party;

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

489 (d) without the principal's consent:

490 (i) obtain information that is not reasonably related to matters with which the supporter

491 is authorized to support or assist the principal pursuant to the supported decision-making
492 agreement;

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

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

497 Section 8. Section **75-5-706** is enacted to read:

498 **75-5-706. Revocation -- Withdrawal.**

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

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

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

505 Section 9. Section **75-5-707** is enacted to read:

506 **75-5-707. Termination.**

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

509 (1) the death of the principal;

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

511 (3) as to a specific supporter, if the supporter is no longer qualified by reason of failure
512 to meet the requirements of Subsection [75-5-701\(12\)\(b\)](#);

513 (4) withdrawal by all of the supporters pursuant to Section [75-5-706](#) without the
514 designation of a successor supporter;

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

518 (6) a court's:

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

521 (b) appointment of a temporary or permanent guardian or conservator, unless the

522 court's order of appointment:

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

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

525 Section 10. Section **75-5-708** is enacted to read:

526 **75-5-708. Impact of supported decision-making agreement.**

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

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

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

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

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

542 Section 11. Section **75-5-709** is enacted to read:

543 **75-5-709. Liability.**

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

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

550 (b) may presume that a supported decision-making agreement is valid and that a
551 purported supporter's authority is valid, unless the person has actual knowledge that the
552 supported decision-making agreement or the purported supporter's authority has been revoked,

553 terminated, or is otherwise void or invalid; and

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

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

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

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

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

571 **Section 12. Effective date.**

572 This bill takes effect on May 1, 2024.