

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Supported Decision-Making Agreement Act is amended by changing Sections 5, 10, 15, 30, 50, and 70 as follows:

(755 ILCS 9/5)

Sec. 5. Purpose; interpretation. The purpose of this Act is to protect vulnerable adults from exploitation by recognizing ~~recognize a less-restrictive alternative to guardianship for adults with intellectual and developmental disabilities~~ who need support making ~~assistance with~~ decisions regarding daily living and who, with proper support, retain the capacity to make those decisions. Supported decision-making is intended to provide individuals a way to maintain autonomy and decision-making authority over their own lives by developing and maintaining voluntary supports to assist them in understanding, making, communicating, and implementing their own informed choices.

This Act shall be administered and interpreted in accordance with the following principles:

- (1) All adults, including adults with disabilities and older adults, are presumed competent and to have the

capacity to make decisions regarding their day-to-day health, safety, welfare, and social and financial affairs,
~~should be able to live in the manner they choose and to accept or refuse support, assistance, or protection unless otherwise determined through legal proceedings as long as they do not harm others and are capable of making decisions about those matters.~~

(2) All adults should be able to be informed about and, to the best of their ability and with the supports they choose, participate in decisions regarding daily living and managing their affairs.

(3) Adults use a wide range of voluntary supports to help them understand, make, and communicate their own decisions. These voluntary arrangements should be encouraged and recognized as a valid way for people to strengthen their capacity and maintain their autonomy.

(4) All adults should receive the most effective yet least restrictive and intrusive forms of support, assistance, and protection when they are unable to care for themselves or manage their affairs alone.

(5) ~~(4)~~ The values, beliefs, wishes, cultural norms, and traditions that the principal holds should be respected.

(6) To safeguard vulnerable persons from exploitation, a supported decision-making agreement:

(A) must include the specific areas for which the

supporter requests support;

(B) should be reviewed every 2 years;

(C) must include information about how to report abuse, neglect, or exploitation of an adult with disabilities;

(D) must allow an interested person to seek suspension or revocation of a supported decision-making agreement;

(E) must require a supporter to attest that the supporter must complete training and is eligible to serve as a supporter;

(F) is automatically terminated if a supporter becomes disqualified;

(G) must contain the names and signatures of 2 witnesses; and

(H) must include a statement that the supporter is not authorized to make a decision for the principal.

(7) Under a supported decision-making agreement:

(A) the principal makes the decisions and retains all personal rights and autonomy;

(B) the principal chooses trusted individuals to support them; and

(C) supporters advise the principal, provide information, and help them understand the implications of different choices, but they do not make the decision.

(Source: P.A. 102-614, eff. 2-27-22.)

(755 ILCS 9/10)

Sec. 10. Definitions. As used in this Act:

"Adult" means a person who is at least 18 years of age.

"Everyday life decisions" means decisions that support one's existence, including, but not limited to, decisions regarding medical care and treatment, one's residence, work, finances, and social life.

"Interested person" means the principal's spouse, parent, or adult child; a governmental agency having regulatory authority to protect the welfare of the principal; a service provider as defined in the Guardianship and Advocacy Act; and the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.

"Principal" means an adult who is not under plenary guardianship and has not otherwise been declared by a physician to lack decisional capacity and ~~with intellectual or developmental disabilities~~ who seeks to enter, or has entered, into a supported decision-making agreement with a supporter under this Act.

"Supported decision-making" means a process of supporting and accommodating a principal to assist the principal in making life decisions under a supported decision-making agreement.

"Supported decision-making agreement" means an agreement

between a principal and a supporter under this Act that identifies the life decisions that can be supported, which may include, but are not limited to, decisions related to where the principal wants to live, with whom the principal wants to live, where the principal wants to work, and the services, supports, or medical care the principal wants to receive without impeding the self-determination of the principal.

"Supporter" means an adult who has entered into a supported decision-making agreement with a principal under this Act.

(Source: P.A. 102-614, eff. 2-27-22.)

(755 ILCS 9/15)

Sec. 15. Presumption of capability.

(a) All adults are presumed to be capable of making decisions regarding daily living and to have capacity unless otherwise determined by a court. ~~A diagnosis of mental illness, intellectual disability, or developmental disability, of itself, does not void the presumption of capacity.~~

(b) The manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the affairs of the adult.

(c) The execution of a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding; however, the existence of such an agreement may be entered into evidence. The execution of a

supported decision-making agreement ~~and~~ does not preclude the ability of the adult who has entered into a supported decision-making agreement to act independently of the agreement.

(Source: P.A. 102-614, eff. 2-27-22.)

(755 ILCS 9/30)

Sec. 30. Supporter duties.

(a) Except as otherwise provided by a supported decision-making agreement, a supporter may:

(1) Assist the principal in understanding information, options, responsibilities, and consequences of the life decisions of the principal, including those decisions related to the affairs or support services of the principal.

(2) Help the principal access, obtain, and understand any information that is relevant to any given life decision, including a medical, psychological, financial, or educational decision, or any treatment records or records necessary to manage the affairs or support services of the principal.

(3) Assist the principal in finding, obtaining, making appointments for, and implementing the support services or plans for support services of the principal.

(4) Help the principal monitor information about the affairs or support services of the principal, including

keeping track of future necessary or recommended services.

(5) Ascertain the wishes and decisions of the principal in order to advocate that the wishes and decisions of an individual with disabilities are implemented.

(b) A supporter shall act with the care, competence, and diligence ordinarily exercised by an individual in a similar circumstance, with due regard to the possession of, or lack of, special skills or expertise.

(c) A supporter shall complete the ~~seek~~ training developed by the Guardianship and Advocacy Commission and education regarding the responsibilities and limitations of the supporter role within 45 days of signing the consent to act as a supporter. The Guardianship and Advocacy Commission shall provide public information about this Act and the supporter role, responsibilities, and limitations.

The Guardianship and Advocacy Commission shall develop training and education materials for both principals and supporters, including, but not limited to, sample agreements that will be posted on the website of the Commission along with public awareness materials.

(Source: P.A. 102-614, eff. 2-27-22.)

(755 ILCS 9/50)

Sec. 50. Agreement instrument.

(a) A supported decision-making agreement must be written

in plain language and include the following:

(1) a list of the areas in which both the principal requests support and the supporter agrees to provide support;

(2) the supporter's agreement that the supporter is not disqualified from acting under Section 20 of this Act;

(3) the supporter's agreement that the supporter will complete the training required by subsection (c) of Section 30 of this Act;

(4) a statement that a supporter is not authorized to make a decision for the principal; and

(5) information about how to report suspicion that an adult with a disability is being abused, neglected, or exploited by the supporter.

(b) A supported decision-making agreement must be signed by the principal and each supporter. The principal may use reasonable modifications, such as assistive technology or physical assistance, to sign the agreement.

(c) A supported decision-making agreement should be reviewed by the principal and all supporters every 2 years and updated, as needed, in the same manner as an initial supported decision-making agreement is executed.

(d) A supported decision-making agreement is valid if it substantially follows the following form:

"SUPPORTED DECISION-MAKING AGREEMENT

Important Information for the Supporter: Duties

If you agree to provide support to the principal, you have a duty to:

- (1) act in good faith;
- (2) act within the authority granted in this agreement;
- (3) act loyally and without self-interest; ~~and~~
- (4) avoid conflicts of interest; and ~~+~~
- (5) complete the training required in Section 30 of the Supported Decision-Making Agreement Act.

Appointment of Supporter

I, (insert principal's name), make this agreement of my own free will.

I agree and designate that the following individual is my supporter:

Name:.....
Address:
Phone Number:.....
Email Address:

My supporter is to help me make decisions for myself and may help me with making everyday life decisions relating to

the following:

(Yes/No) obtaining food, clothing, and shelter.

(Yes/No) taking care of my physical and emotional health.

(Yes/No) managing my financial affairs.

(Yes/No) applying for public benefits.

(Yes/No) helping me find work.

(Yes/No) assisting with residential services.

(Yes/No) helping me with school.

(Yes/No) helping me advocate for myself.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

(1) help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, housing, and treatment records;

(2) help me understand my options so that I can make an informed decision; and

(3) help me communicate my decision to appropriate persons.

I want my supporter to have:

(Yes/No) A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 is attached.

(Yes/No) A release allowing my supporter to see confidential information under the Mental Health and Developmental Disabilities Confidentiality Act is attached.

(Yes/No) A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 and the Illinois School Records Act is attached.

(Yes/No) A release allowing my supporter to see substance abuse records under Confidentiality of Alcohol and Drug Abuse Patient Records regulations is attached.

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this day of, 20....

(Signature of Principal) (Printed name of principal)

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(Signature of supporter) (Printed name of supporter)

(Witness 1 signature) (Printed name of witness 1)

(Witness 2 signature) (Printed name of witness 2)

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE ADULT PROTECTIVE SERVICES HOTLINE: 1-866-800-1409, 1-888-206-1327 (TTY)."

This form is not intended to exclude other forms or agreements that identify the principal, supporter, and types of supports.

(Source: P.A. 102-614, eff. 2-27-22.)

(755 ILCS 9/70)

Sec. 70. Term of agreement; revocation.

(a) A supported decision-making agreement extends until terminated ~~by either party or by the terms of the agreement.~~

(b) A supported decision-making agreement is terminated if:

(1) the Office of Inspector General or Adult Protective Services substantiated an allegation of abuse

or neglect by the supporter; ~~or~~

(2) there is a restraining order against the supporter by or on behalf of the principal;~~or~~

(3) all supporters become disqualified from acting as a supporter under Section 20 of this Act;

(4) the principal revokes the agreement;

(5) the supporter resigns; or

(6) the agreement includes a termination date.

(b-5) A supported decision-making agreement is suspended while:

(1) the conditions of Section 15 of the Health Care Surrogate Act are met;

(2) a medical or psychological evaluation has concluded the principal lacks decisional capacity but a subsequent evaluation has not yet found the principal's decisional capacity restored; or

(3) the agency established in a durable power of attorney has begun but not yet terminated.

(c) A principal may revoke his or her supported decision-making agreement and invalidate the supported decision-making agreement at any time by:

(1) canceling or destroying the supported decision-making agreement or directing another in the presence of the principal to destroy the decision-making agreement;

(2) executing a statement, in writing, that is signed

and dated by the principal, expressing his or her intent to revoke the supported decision-making agreement; or

(3) verbally expressing the intent of the principal to revoke the supported decision-making agreement in the presence of 2 witnesses.

(d) Unless the supported decision-making agreement provides a different method for the resignation of the supporter ~~support~~, a supporter may resign by giving written notice to the principal.

(d-5) A supporter must give written notice to the principal if the supporter becomes disqualified from acting as a supporter under Section 20 of this Act.

(e) The last signed agreement holds.

(f) Upon the filing of a petition by an interested person, a court may suspend or terminate a supported decision-making agreement if necessary to ensure the well-being and safety of the principal. Proceedings under this subsection may be commenced in the county where the principal resides.

(Source: P.A. 102-614, eff. 2-27-22.)