



Rep. Michelle Mussman

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10400HB5365ham001

LRB104 18224 JRC 36214 a

1 AMENDMENT TO HOUSE BILL 5365

2 AMENDMENT NO. _____. Amend House Bill 5365 by replacing
3 everything after the enacting clause with the following:

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

7 (755 ILCS 9/5)

8 Sec. 5. Purpose; interpretation. The purpose of this Act
9 is to protect vulnerable adults from exploitation by
10 recognizing ~~recognize a less restrictive alternative to~~
11 ~~guardianship for~~ adults ~~with intellectual and developmental~~
12 ~~disabilities~~ who need support making ~~assistance with~~ decisions
13 regarding daily living and who, with proper support, retain
14 the capacity to make those decisions. Supported
15 decision-making is intended to provide individuals a way to
16 maintain autonomy and decision-making authority over their own

1 lives by developing and maintaining voluntary supports to
2 assist them in understanding, making, communicating, and
3 implementing their own informed choices.

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

6 (1) All adults, including adults with disabilities and
7 older adults, are presumed competent and to have the
8 capacity to make decisions regarding their day-to-day
9 health, safety, welfare, and social and financial affairs,
10 ~~should be able~~ to live in the manner they choose and to
11 accept or refuse support, assistance, or protection unless
12 otherwise determined through legal proceedings as long as
13 ~~they do not harm others and are capable of making~~
14 ~~decisions about those matters.~~

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

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

24 (4) All adults should receive the most effective yet
25 least restrictive and intrusive forms of support,
26 assistance, and protection when they are unable to care

1 for themselves or manage their affairs alone.

2 (5) ~~(4)~~ The values, beliefs, wishes, cultural norms,
3 and traditions that the principal holds should be
4 respected.

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

7 (A) must include the specific areas for which the
8 supporter requests support;

9 (B) should be reviewed every 2 years;

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

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

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

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

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

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

25 (7) Under a supported decision-making agreement:

26 (A) the principal makes the decisions and retains

1 all personal rights and autonomy;

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

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

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

9 (755 ILCS 9/10)

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

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

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

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

22 "Principal" means an adult who is not under plenary
23 guardianship and has not otherwise been declared by a
24 physician to lack decisional capacity and ~~with intellectual or~~
25 ~~developmental disabilities~~ who seeks to enter, or has entered,

1 into a supported decision-making agreement with a supporter
2 under this Act.

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

7 "Supported decision-making agreement" means an agreement
8 between a principal and a supporter under this Act that
9 identifies the life decisions that can be supported, which may
10 include, but are not limited to, decisions related to where
11 the principal wants to live, with whom the principal wants to
12 live, where the principal wants to work, and the services,
13 supports, or medical care the principal wants to receive
14 without impeding the self-determination of the principal.

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

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

19 (755 ILCS 9/15)

20 Sec. 15. Presumption of capability.

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

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

4 (c) The execution of a supported decision-making agreement
5 may not be used as evidence of capacity or incapacity in any
6 civil or criminal proceeding; however, the existence of such
7 an agreement may be entered into evidence. The execution of a
8 supported decision-making agreement ~~and~~ does not preclude the
9 ability of the adult who has entered into a supported
10 decision-making agreement to act independently of the
11 agreement.

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

13 (755 ILCS 9/30)

14 Sec. 30. Supporter duties.

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

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

22 (2) Help the principal access, obtain, and understand
23 any information that is relevant to any given life
24 decision, including a medical, psychological, financial,
25 or educational decision, or any treatment records or

1 records necessary to manage the affairs or support
2 services of the principal.

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

6 (4) Help the principal monitor information about the
7 affairs or support services of the principal, including
8 keeping track of future necessary or recommended services.

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

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

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

24 The Guardianship and Advocacy Commission shall develop
25 training and education materials for both principals and
26 supporters, including, but not limited to, sample agreements

1 that will be posted on the website of the Commission along with
2 public awareness materials.

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

4 (755 ILCS 9/50)

5 Sec. 50. Agreement instrument.

6 (a) A supported decision-making agreement must be written
7 in plain language and include the following:

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

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

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

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

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

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

25 (c) A supported decision-making agreement should be

1 reviewed by the principal and all supporters every 2 years and
2 updated, as needed, in the same manner as an initial supported
3 decision-making agreement is executed.

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

6 "SUPPORTED DECISION-MAKING AGREEMENT

7 Important Information for the Supporter: Duties

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

10 (1) act in good faith;

11 (2) act within the authority granted in this
12 agreement;

13 (3) act loyally and without self-interest; ~~and~~

14 (4) avoid conflicts of interest; and ~~and~~

15 (5) complete the training required in Section 30 of
16 the Supported Decision-Making Agreement Act.

17 Appointment of Supporter

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

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

1 Name:.....
 2 Address:
 3 Phone Number:.....
 4 Email Address:

5 My supporter is to help me make decisions for myself and
 6 may help me with making everyday life decisions relating to
 7 the following:

- 8 (Yes/No) obtaining food, clothing, and shelter.
- 9 (Yes/No) taking care of my physical and emotional
 10 health.
- 11 (Yes/No) managing my financial affairs.
- 12 (Yes/No) applying for public benefits.
- 13 (Yes/No) helping me find work.
- 14 (Yes/No) assisting with residential services.
- 15 (Yes/No) helping me with school.
- 16 (Yes/No) helping me advocate for myself.

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

- 19 (1) help me access, collect, or obtain information
 20 that is relevant to a decision, including medical,
 21 psychological, financial, educational, housing, and
 22 treatment records;
- 23 (2) help me understand my options so that I can make an
 24 informed decision; and

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

3 I want my supporter to have:

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

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

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

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

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

22 Signed this day of, 20....

23 (Signature of Principal) (Printed name of principal)

1 Consent of Supporter

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

4 (Signature of supporter) (Printed name of supporter)

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

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

7 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

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

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

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

19 (755 ILCS 9/70)

1 Sec. 70. Term of agreement; revocation.

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

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

6 (1) the Office of Inspector General or Adult
7 Protective Services substantiated an allegation of abuse
8 or neglect by the supporter; ~~or~~

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

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

13 (4) the principal revokes the agreement;

14 (5) the supporter resigns; or

15 (6) the agreement includes a termination date.

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

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

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

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

26 (c) A principal may revoke his or her supported

1 decision-making agreement and invalidate the supported
2 decision-making agreement at any time by:

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

7 (2) executing a statement, in writing, that is signed
8 and dated by the principal, expressing his or her intent
9 to revoke the supported decision-making agreement; or

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

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

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

20 (e) The last signed agreement holds.

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

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