

STATE OF NEW MEXICO

FIFTY-SEVENTH LEGISLATURE
FIRST SESSION, 2025

CONCURRENT CALENDAR No.16

(1) SFC SUB SB 535/a

STATE FEES & FUNDS / H/FLOOR AMENDED

SEN. MUNOZ/SEN.
SEDILLO LOPEZ

HOUSE FLOOR AMENDMENT

1. On page 1, line 20, after the semicolon, insert "ENACTING THE SUPPORTED DECISION-MAKING ACT; PROVIDING REQUIREMENTS FOR SUPPORTED DECISION-MAKING AGREEMENTS; PROVIDING DUTIES FOR SUPPORTERS; CREATING REPORTING REQUIREMENTS; CREATING A SUPPORTED DECISION-MAKING PROGRAM IN THE OFFICE OF GUARDIANSHIP WITHIN THE DEVELOPMENTAL DISABILITIES COUNCIL;".

2. On page 12, between lines 9 and 10, insert:

"SECTION 9. [NEW MATERIAL] SHORT TITLE.--Sections 9 through 22 of this act may be cited as the "Supported Decision-Making Act".

SECTION 10. [NEW MATERIAL] DEFINITIONS.--As used in the Supported Decision-Making Act:

A. "adult" means a person who is at least eighteen years of age;

B. "decision-maker" means an adult who seeks to enter, or has entered, into a supported decision-making agreement with one or more supporters pursuant to the Supported Decision-Making Act;

C. "decision-making support" means assistance in understanding the options, responsibilities and consequences of a decision-maker's life decisions without making those decisions on behalf of the decision-maker;

D. "supported decision-making agreement" means an agreement entered into between a decision-maker and a supporter pursuant to the provisions of the Supported Decision-Making Act; and

E. "supporter" means an adult who has entered into a supported decision-making agreement with a decision-maker pursuant to the Supported Decision-Making Act.

SECTION 11. [NEW MATERIAL] SUPPORTED DECISION-MAKING AGREEMENTS--SCOPE OF AGREEMENTS.--A decision-maker may voluntarily,

without undue influence or coercion, enter into a supported decision-making agreement with one or more supporters under which the decision-maker authorizes the supporter to do any or all of the following:

- A. provide decision-making support;
- B. assist the decision-maker in accessing, collecting and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational or treatment records, from any person;
- C. assist the decision-maker in understanding the information described in Subsection B of this section; and
- D. assist the decision-maker in communicating the decision-maker's decisions to appropriate persons.

SECTION 12. [NEW MATERIAL] SUPPORTED DECISION-MAKING AGREEMENT REQUIREMENTS.--

A. A supported decision-making agreement shall be in a form promulgated by the supreme court that shall:

- (1) be in writing;
- (2) be dated;
- (3) be signed voluntarily, without coercion or undue influence, by the decision-maker and the supporter;
- (4) designate a supporter;
- (5) list the types of decisions with which the supporter is authorized to assist the decision-maker;
- (6) list the types of decisions, if any, with which the supporter is not authorized to assist the decision-maker; and
- (7) contain a consent signed by the supporter indicating the supporter's:
 - (a) relationship to the decision-maker;
 - (b) willingness to act as a supporter; and
 - (c) acknowledgment of the duties of a supporter.

B. Each party to a supported decision-making agreement shall sign the agreement in the presence of at least two adult witnesses whose signatures shall be acknowledged by a notary public.

SECTION 13. [NEW MATERIAL] PRESUMPTION OF CAPACITY.--

A. All decision-makers are presumed to have capacity until such time as the decision-maker's primary care practitioner and one other qualified health professional with training and experience in the assessment of functional impairment, or a court, determine that the decision-maker is unable to make the

decision-maker's own decisions. A diagnosis of mental illness, intellectual disability or developmental disability, of itself, does not void the presumption of capacity.

B. The manner in which a decision-maker communicates with others is not grounds for determining that the decision-maker is incapable of managing the decision-maker's own affairs.

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

**SECTION 14. [NEW MATERIAL] SUPPORTER DUTIES AND AUTHORITY--
SUPPORTER PROHIBITIONS.--**

A. A supporter shall:

- (1) act in good faith;
- (2) act with the care, competence and diligence ordinarily exercised by a reasonable person in similar circumstances;
- (3) act only within the scope of authority granted in the supported decision-making agreement;
- (4) not engage in self-dealing;
- (5) support the will and preference of the decision-maker rather than the supporter's opinion of the decision-maker's best interests;
- (6) not receive compensation as a result of the supporter's duties under a supported decision-making agreement; and
- (7) stop serving as a supporter if the supporter questions the capacity of the decision-maker to continue making decisions.

B. In the absence of an applicable power of attorney a supporter is prohibited from:

- (1) making decisions on behalf of the decision-maker;
- (2) signing legal documents on behalf of the decision-maker;
- (3) binding the decision-maker to a legal agreement;
- (4) obtaining, without the consent of the decision-maker, information that is not reasonably related to matters with which the supporter is authorized to assist pursuant to the supported decision-making agreement; and
- (5) using, without the consent of the decision-maker, information acquired for a purpose other than assisting the decision-maker to

make a decision under the supported decision-making agreement.

SECTION 15. [NEW MATERIAL] SUPPORTER DISQUALIFICATIONS.--The following persons are disqualified from acting as a supporter:

- A. an individual who is the subject of a civil or criminal order prohibiting contact with the decision-maker;
- B. an individual who has been placed on the state's employee abuse registry;
- C. an individual who has been convicted of a crime involving violence or dishonesty within the preceding ten years; and
- D. an individual who is currently incarcerated.

SECTION 16. [NEW MATERIAL] ACCESS TO PERSONAL INFORMATION.--If a supporter assists a decision-maker in accessing, collecting or obtaining personal information, including financial information, protected health information under the federal Health Insurance Portability and Accountability Act of 1996 or educational records under the federal Family Educational Rights and Privacy Act of 1974, the supporter shall ensure that the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use or disclosure.

SECTION 17. [NEW MATERIAL] DECISION-MAKER ACCESS TO PERSONAL INFORMATION.--The existence of a supported decision-making agreement does not preclude a decision-maker from seeking personal information without the assistance of the supporter.

SECTION 18. [NEW MATERIAL] THIRD PARTY RELIANCE ON SUPPORTED DECISION-MAKING AGREEMENT.--A person who receives an original or a copy of a supported decision-making agreement shall rely on the agreement, unless the person suspects abuse, neglect or exploitation and makes a report pursuant to Section 21 of this 2025 act.

SECTION 19. [NEW MATERIAL] RECOGNITION OF DECISIONS MADE WITH ASSISTANCE OF SUPPORTER.--A decision or request made or communicated with the assistance of a supporter in conformity with the Supported Decision-Making Act shall be recognized for the purposes of any provision of law as the decision or request of the decision-maker.

SECTION 20. [NEW MATERIAL] TERM OF SUPPORTED DECISION-MAKING AGREEMENT--TERMINATION OR REVOCATION OF AGREEMENT.--

A. Except as provided by Subsection B of this section, the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

B. The supported decision-making agreement is terminated as to a particular supporter if:

- (1) the adult protective services division of the aging and long-term services department finds that the decision-maker has been abused, neglected or exploited by the supporter;

(2) the supporter is the subject of a civil or criminal order prohibiting contact with the decision-maker;

(3) the supporter has been placed on the state's employee abuse registry;

(4) the supporter has been convicted of a crime involving violence or dishonesty;

(5) the supporter is incarcerated;

(6) the decision-maker gives notice to the supporter orally, in writing, through an assistive technology device or by any other means or act showing a specific intent to terminate the agreement; or

(7) the supporter provides written notice of the supporter's resignation to the decision-maker.

SECTION 21. [NEW MATERIAL] REPORTING OF SUSPECTED ABUSE, NEGLECT OR EXPLOITATION.--If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the decision-maker is being abused, neglected or exploited by the supporter, the person shall report the alleged abuse, neglect or exploitation to the aging and long-term services department's adult protective services division's statewide intake hotline.

SECTION 22. [NEW MATERIAL] SUPPORTED DECISION-MAKING PROGRAM--CREATED--PROGRAM DUTIES.--

A. The "supported decision-making program" is created within the office of guardianship in the developmental disabilities council.

B. The supported decision-making program may:

(1) provide information to adults interested in entering into supported decision-making agreements;

(2) facilitate adults in forming, executing and terminating supported decision-making agreements;

(3) monitor supported decision-making agreements to determine if the agreement meets statutory requirements;

(4) provide resources and assistance for a decision-maker who believes a supporter is acting outside the scope of the supported decision-making agreement; and

(5) provide resources to any individual who is seeking information on reporting suspected abuse, neglect or exploitation of the decision-maker."

3. Renumber the succeeding section accordingly.

