

SENATE BILL 89

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO HEALTH; ENACTING THE SUPPORTED DECISION-MAKING ACT;  
PROVIDING REQUIREMENTS FOR SUPPORTED DECISION-MAKING  
AGREEMENTS; PROVIDING DUTIES FOR SUPPORTERS; PROVIDING A  
LIMITATION OF LIABILITY; CREATING REPORTING REQUIREMENTS;  
CREATING A SUPPORTED DECISION-MAKING PROGRAM WITHIN THE OFFICE  
OF GUARDIANSHIP IN THE DEVELOPMENTAL DISABILITIES COUNCIL;  
MAKING AN APPROPRIATION.

.223440.3AIC      January 30, 2023 (1:20pm)

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Supported Decision-Making Act".

SECTION 2. [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. "supported 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. "supported decision-making agreement" means an agreement entered into between a supported decision-maker and a supporter pursuant to the provisions of the Supported Decision-Making Act; and

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

SECTION 3. [NEW MATERIAL] SUPPORTED DECISION-MAKING AGREEMENTS--SCOPE OF AGREEMENTS.--A supported decision-maker may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with one or more supporters under which the supported decision-maker authorizes the supporter to do any or all of the following:

A. provide supported decision-making, including assistance in understanding the options, responsibilities and

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consequences of the supported decision-maker's life decisions without making those decisions on behalf of the supported decision-maker;

B. assist the supported 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 supported decision-maker in understanding the information described in Subsection B of this section; and

D. assist the supported decision-maker in communicating the supported decision-maker's decisions to appropriate persons.

**SECTION 4. [NEW MATERIAL] SUPPORTED DECISION-MAKING AGREEMENT REQUIREMENTS.--**

A. A supported decision-making agreement may be in any form but shall:

- (1) be in writing;
- (2) be dated;
- (3) be signed voluntarily, without coercion or undue influence, by the supported decision-maker and the supporter;
- (4) designate a supporter;
- (5) list the types of decisions with which the supporter is authorized to assist the supported decision-maker;

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(6) list the types of decisions, if any, with which the supporter is not authorized to assist the supported decision-maker; and

(7) contain a consent signed by the supporter indicating the supporter's:

(a) relationship to the supported 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 or a notary public.

**SECTION 5. [NEW MATERIAL] PRESUMPTION OF CAPACITY.--**

A. All supported decision-makers are presumed to have capacity and to be capable of managing their affairs 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 a supported decision-maker communicates with others is not grounds for determining that the supported decision-maker is incapable of managing the supported 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 supported decision-maker who has entered into a supported decision-making agreement to act independently of the agreement.

**SECTION 6. [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 supporters in similar circumstances;
- (3) act only within the scope of authority granted in the supported decision-making agreement;
- (4) avoid self-dealing; and
- (5) support the will and preference of the supported decision-maker rather than the supporter's opinion of the supported decision-maker's best interests.

**B. A supporter is prohibited from:**

- (1) making decisions on behalf of the supported decision-maker;
- (2) obtaining, without the consent of the supported 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
- (3) using, without the consent of the supported decision-maker, information acquired for a purpose

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other than assisting the supported decision-maker to make a decision under the supported decision-making agreement.

**SECTION 7. [NEW MATERIAL] SUPPORTER NOT A FIDUCIARY AGENT.--**A supporter is not a fiduciary agent of the supported decision-maker.

**SECTION 8. [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 supported decision-maker;

B. an individual who has been placed on the department of health'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 9. [NEW MATERIAL] ACCESS TO PERSONAL INFORMATION.--**

A. If a supporter assists a supported 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

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and confidential, as applicable, and is not subject to unauthorized access, use or disclosure.

B. The existence of a supported decision-making agreement does not preclude a supported decision-maker from seeking personal information without the assistance of the supporter.

**SECTION 10. [NEW MATERIAL] THIRD PARTY RELIANCE ON SUPPORTED DECISION-MAKING AGREEMENT--LIMITATION OF LIABILITY.--**

A. A person who receives an original or a copy of a supported decision-making agreement shall rely on the agreement.

B. A person is not subject to civil or criminal liability for an act or omission done in good faith and in reliance on a supported decision-making agreement or in complying with or attempting to comply with the provisions of the Supported Decision-Making Act.

C. A supporter is not subject to the provisions of this section.

**SECTION 11. [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 supported decision-maker.

**SECTION 12. [NEW MATERIAL] TERM OF SUPPORTED DECISION-MAKING AGREEMENT--TERMINATION OR REVOCATION OF AGREEMENT.--**

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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 supported 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 supported decision-maker;

(3) the supporter has been placed on the department of health's employee abuse registry;

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

(5) the supporter is incarcerated;

(6) the supported 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 supported decision-maker.

SECTION 13. [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

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existence of a supported decision-making agreement has cause to believe that the supported 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 14. [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;

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

SHPAC→(2)←SHPAC SHPAC→(3)←SHPAC  
SHPAC→review←SHPAC SHPAC→monitor←SHPAC supported decision-making agreements SHPAC→and help←SHPAC SHPAC→to←SHPAC determine if the agreement meets statutory requirements;

SHPAC→(3)←SHPAC SHPAC→(4)←SHPAC provide resources SHPAC→for←SHPAC SHPAC→and assistance to←SHPAC a supported decision-maker who believes a supporter is acting outside the scope of the SHPAC→supported decision-maker's and

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~~the supporter's~~←SHPAC supported decision-making agreement; and  
SHPAC→(4)←SHPAC SHPAC→(5)←SHPAC provide  
resources to any individual who is seeking information on  
reporting suspected abuse, neglect or exploitation of the  
supported decision-maker.

SECTION 15. APPROPRIATION.-- SHPAC→~~One hundred eighty-~~  
~~nine thousand dollars (\$189,000)~~←SHPAC SHPAC→Two hundred  
eighty-nine thousand dollars (\$289,000)←SHPAC is appropriated  
from the general fund to the developmental disabilities council  
for expenditure in fiscal year 2024 to carry out the provisions  
of the Supported Decision-Making Act and to hire SHPAC→a←SHPAC  
SHPAC→two←SHPAC full-time SHPAC→employee←SHPAC  
SHPAC→employees←SHPAC and contract support to create and  
administer the supported decision-making program in the office  
of guardianship in the developmental disabilities council. Any  
unexpended or unencumbered balance remaining at the end of  
fiscal year 2024 shall revert to the general fund.