



## 2017 ASSEMBLY BILL 655

November 14, 2017 - Introduced by Representatives BERNIER, NOVAK, MEYERS, KOLSTE, PETRYK, EDMING, DOYLE, BERCEAU, STEFFEN, FIELDS, ANDERSON, MURSAU, HORLACHER, SUMMERFIELD, THIESFELDT, KRUG, E. BROOKS, CONSIDINE, SUBECK, TITTL, LOUDENBECK, SARGENT, MACCO, FELZKOWSKI, SPIROS, RIPP, CROWLEY, SINICKI, BROSTOFF, KULP, GOYKE, KOOYENGA, BOWEN and SPREITZER, cosponsored by Senators HARSDORF, OLSEN, JOHNSON, MARKLEIN, MILLER, RINGHAND, BEWLEY and HANSEN. Referred to Committee on Family Law.

1     **AN ACT to amend** 54.10 (3) (a) 4. and 54.10 (3) (b); and **to create** chapter 53, 54.10  
2           (2) (b) 9m. and 115.807 (4) of the statutes; **relating to:** supported  
3           decision-making agreements.

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### *Analysis by the Legislative Reference Bureau*

This bill allows an adult with a functional impairment to create a supported decision-making agreement to allow another person, referred to as a “supporter,” to assist the adult with certain decision-making by providing assistance with one or more of the following: 1) understanding the options, responsibilities, and consequences of the adult’s life decisions, without making the decision for the adult; 2) accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records; 3) understanding that information once it is obtained; or 4) communicating the adult’s life decisions to the appropriate people. Under the bill, a designated supporter is not a surrogate decision maker for the adult and is not authorized to sign legal documents for the adult or bind the adult to a legal agreement. The supporter has only the authority granted by the adult under the terms of the supported decision-making agreement. Execution of a supported decision-making agreement does not preclude an adult with a functional impairment from acting independently of the agreement, nor may the agreement be used as evidence of incapacity or incompetency.

The bill requires the Department of Health Services to prepare and provide access to a supported decision-making form and information regarding supported



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- 1           **(1)** “Abuse” has the meaning given in s. 46.90 (1) (a).
- 2           **(2)** “Functional impairment” means any of the following:
- 3           (a) A physical, developmental, or mental condition that substantially limits one
- 4 or more of an individual’s major life activities, including any of the following:
- 5           1. Capacity for independent living.
- 6           2. Self direction.
- 7           3. Self care.
- 8           4. Mobility.
- 9           5. Communication.
- 10          6. Learning.
- 11          (b) Impairment as defined under s. 54.01 (14).
- 12          (c) Other like incapacities as defined under s. 54.01 (22).
- 13          **(3)** “Financial exploitation” has the meaning given in s. 46.90 (1) (ed).
- 14          **(4)** “Health care provider” has the meaning given in s. 155.01 (7).
- 15          **(5)** “Neglect” has the meaning given in s. 46.90 (1) (f).
- 16          **(6)** “Supported decision-making” means a process of supporting and
- 17 accommodating an adult with a functional impairment to enable the adult to make
- 18 life decisions, including decisions related to where the adult wants to live, the
- 19 services, supports, and medical care the adult wants to receive, whom the adult
- 20 wants to live with, and where the adult wants to work, without impeding the
- 21 self-determination of the adult.
- 22          **(7)** “Supported decision-making agreement” is an agreement between an adult
- 23 with a functional impairment and a supporter entered into under this chapter.
- 24          **(8)** “Supporter” means an adult who is willing to enter into an agreement with
- 25 an adult with a functional impairment to provide supported decision-making.

**53.03 Agreement not evidence of incapacity or incompetency.**

Execution of a supported decision-making agreement may not be used as evidence of incapacity or incompetency and does not preclude an adult with a functional impairment who has entered into such an agreement from acting independently of the agreement.

## SUBCHAPTER II

## SCOPE OF AGREEMENT

## AND AGREEMENT REQUIREMENTS

**53.10 Scope.** (1) If an adult with a functional impairment decides voluntarily, without coercion, to enter into a supported decision-making agreement with a supporter, that adult may, in the agreement, authorize the supporter to do any of the following:

(a) Provide supported decision-making to the adult with a functional impairment, including assistance in understanding the options, responsibilities, and consequences of that person's life decisions, without making those decisions on behalf of that person.

(b) Assist the adult with a functional impairment 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 adult with a functional impairment in understanding the information described in par. (b).

(d) Assist the adult with a functional impairment in communicating the adult's decisions to appropriate persons.

(2) A supporter is not a surrogate decision maker for the adult with a functional impairment and does not have the authority to sign legal documents on behalf of the

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1 adult with a functional impairment or bind the adult with a functional impairment  
2 to a legal agreement.

3 **53.12 Authority of supporter.** A supporter may exercise the authority  
4 granted to the supporter in the supported decision-making agreement.

5 **53.14 Term of agreement; revocation. (1)** Except as otherwise provided  
6 in this section, a supported decision-making agreement extends until terminated by  
7 either party or by the terms of the agreement.

8 **(2)** A supported decision-making agreement is terminated if any of the  
9 following are true:

10 (a) County adult protective services substantiated an allegation of neglect or  
11 abuse by the supporter.

12 (b) The supporter is found criminally liable for conduct described under par. (a).

13 (c) There is a restraining order against the supporter as described under s.  
14 813.123.

15 **(3)** An adult with a functional impairment may revoke his or her supported  
16 decision-making agreement and invalidate the supported decision-making  
17 agreement at any time by doing any of the following:

18 (a) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying  
19 the supported decision-making agreement or directing another in the presence of  
20 the adult with a functional impairment to so destroy the supported decision-making  
21 agreement.

22 (b) Executing a statement, in writing, that is signed and dated by the adult with  
23 a functional impairment, expressing his or her intent to revoke the supported  
24 decision-making agreement.

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1 (c) Verbally expressing the intent of the adult with a functional impairment to  
2 revoke the supported decision-making agreement, in the presence of 2 witnesses.

3 (4) Unless the supported decision-making agreement provides a different  
4 method for the supporter's resignation, a supporter may resign by giving notice to  
5 the adult with a functional impairment.

6 **53.16 Access to personal information. (1)** A supporter is only authorized  
7 to assist the adult with a functional impairment in accessing, collecting, or obtaining  
8 information that is relevant to a decision authorized under the supported  
9 decision-making agreement.

10 (2) A supporter may assist with accessing or obtaining any information that  
11 will help the adult with a functional impairment make health care decisions,  
12 including medical, psychological, financial, education, or treatment records or  
13 research under ss. 51.30 and 146.83 and the federal Health Insurance Portability  
14 and Accountability Act of 1996, 45 CFR 164.502. A supporter may only access or  
15 obtain patient health care records, as defined under s. 146.81 (4), if the adult with  
16 a functional impairment has signed a release allowing the supporter to see protected  
17 health information, as defined under s. 146.816 (1) (f).

18 (3) A supporter may assist with accessing or obtaining any information on  
19 education records under the federal Family Educational Rights and Privacy Act of  
20 1974, 20 USC 1232g, if the adult with a functional impairment has signed a release  
21 allowing the supporter to access information under this subsection.

22 (4) The supporter shall ensure the information under this section is kept  
23 privileged and confidential, as applicable, and is not subject to unauthorized access,  
24 use, or disclosure.



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1 E-mail address of supporter ....

2 Phone number(s) of supporter ....

3 is my supporter. For the following everyday life decisions, if I have checked  
4 “Yes,” my supporter may help me with that type of decision, but if I have checked  
5 “No,” my supporter may not help me with that type of decision:

6 Obtaining food, clothing, and shelter — Yes.... No....

7 Taking care of my physical health — Yes.... No....

8 Managing my financial affairs — Yes.... No....

9 Taking care of my mental health — Yes.... No....

10 Applying for public benefits — Yes.... No....

11 Assistance with seeking vocational rehabilitation services and other vocational  
12 supports — Yes.... No....

13 The following are other decisions I have specifically identified that I would like  
14 assistance with ....

15 If I have not checked either “Yes” or “No” or specifically identified and listed a  
16 decision immediately above, my supporter may not help me with that type of  
17 decision.

18 My supporter is not allowed to make decisions for me. To help me with my  
19 decisions, my supporter may do any of the following, if I have checked “Yes”:

20 1. Help me access, collect, or obtain information, including records, relevant to  
21 a decision. If I have checked “Yes,” my supporter may help me access, collect, or  
22 obtain the type of information specified, including relevant records, but if I have  
23 checked “No,” or I have not checked either “Yes” or “No,” my supporter may not help  
24 me access, collect, or obtain that type of information:

25 Medical — Yes.... No....

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1 Psychological — Yes.... No....

2 Financial — Yes.... No....

3 Education — Yes.... No....

4 Treatment — Yes.... No....

5 Other — Yes.... No.... (If “Yes,” specify the other type(s) of information with  
6 which the supporter may assist ....)

7 2. Help me understand my options so I can make an informed decision.  
8 Yes.... No....

9 3. Help me communicate my decision to appropriate persons.  
10 Yes.... No....

11 4. Help me access appropriate personal records, including protected health  
12 information under the Health Insurance Portability and Accountability Act, the  
13 Family Educational Rights and Privacy Act, and other records that may or may not  
14 require a release for specific decisions I want to make.  
15 Yes.... No....

**EFFECTIVE DATE OF SUPPORTED**

**DECISION-MAKING AGREEMENT**

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

21 (print) Name of person designating a supporter ....

22 Signature ....

23 Date ....

24 **CONSENT OF SUPPORTER**

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**SECTION 1**

1 I know .... (name of person) personally or I have received proof of his or her  
2 identity and I believe him or her to be at least 18 years of age and entering this  
3 agreement knowingly and voluntarily. I am at least 18 years of age.

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

5 Supporter:

6 (print) Name ....

7 Address ....

8 E-mail address ....

9 Phone number(s) ....

10 Signature ....

11 Date ....

12 STATEMENT AND SIGNATURE

13 OF WITNESSES OR

14 SIGNATURE OF NOTARY

15 (This agreement must be signed either by 2 witnesses who are at least 18 years  
16 of age or by a notary public.)

17 OPTION I: WITNESSES

18 I know .... (name of person) personally or I have received proof of his or her  
19 identity and I believe him or her to be at least 18 years of age and entering this  
20 agreement knowingly and voluntarily. I am at least 18 years of age.

21 Witness No. 1:

22 (print) Name ....

23 Address ....

24 Phone number(s) ....

25 Signature ....

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1 Date ....

2 Witness No. 2:

3 (print) Name ....

4 Address ....

5 Phone number(s) ....

6 Signature ....

7 Date ....

8 **OPTION II: NOTARY PUBLIC**

9 State of ....

10 County of ....

11 This document was acknowledged before me on .... (date), by .... (name of adult  
12 with a functional impairment) and ..... (name of supporter).

13 Signature of notary ....

14 (Seal, if any, of notary)

15 Printed name ....

16 My commission expires: ....

17 **(2)** The department of health services shall prepare and provide access to a  
18 supported decision-making agreement instrument and accompanying information  
19 for adults with functional impairments, family members of adults with functional  
20 impairments, education professionals and school districts, health care and social  
21 service professionals, county clerks, and local bar associations. The department may  
22 charge a reasonable fee for the cost of preparation and distribution.

23 **SUBCHAPTER III**

24 **DUTY OF CERTAIN PERSONS**

25 **WITH RESPECT TO AGREEMENT**

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1           **53.30 Reliance on agreement; limitation of liability.** (1) A person who  
2 receives the original or a copy of a supported decision-making agreement shall rely  
3 on the agreement, except if the person has cause to believe that the adult with a  
4 functional impairment is being abused, neglected, unduly influenced, or financially  
5 exploited by the supporter as described under s. 53.32.

6           (2) A person is not subject to criminal or civil liability and has not engaged in  
7 professional misconduct for an act or omission if the act or omission is done in good  
8 faith and in reliance on a supported decision-making agreement.

9           (3) Any health care provider that respects and acts consistently with the  
10 authority given to a supporter by a duly executed supported decision-making  
11 agreement shall be immune from any action alleging that the agreement was invalid  
12 unless the entity, custodian, or organization had actual knowledge or notice that the  
13 adult with a functional impairment had revoked such authorization, that the  
14 agreement was invalid, or that the supporter had committed abuse, neglect, or  
15 financial exploitation as described in s. 53.14 (2) (a).

16           (4) Any health care provider that provides health care based on the consent of  
17 an adult with a functional impairment, made with supports and services provided  
18 through a duly executed supported decision-making agreement, shall be immune  
19 from any action alleging that the adult with a functional impairment lacked capacity  
20 to provide informed consent unless the entity, custodian, or organization had actual  
21 knowledge or notice that the adult with a functional impairment had revoked such  
22 authorization, that the agreement was invalid, or that the supporter had committed  
23 abuse, neglect, or financial exploitation as described in s. 53.14 (2) (a).

24           (5) Any public or private entity, custodian, or organization that discloses  
25 personal information about an adult with a functional impairment to a supporter

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1 who is authorized to access, collect, or obtain or assist the adult with a functional  
2 impairment in accessing, collecting, or obtaining that information shall be immune  
3 from any action alleging that it improperly or unlawfully disclosed such information  
4 to the supporter unless the entity, custodian, or organization had actual knowledge  
5 that the adult with a functional impairment had revoked such authorization.

6 (6) This section may not be construed to provide immunity from actions  
7 alleging that a health care provider has done any of the following:

8 (a) Caused personal injury as a result of a negligent, reckless, or intentional  
9 act.

10 (b) Acted inconsistently with the expressed wishes of an adult with a functional  
11 impairment.

12 (c) Failed to provide information to either an adult with a functional  
13 impairment or his or her supporter that would be necessary for informed consent.

14 (d) Otherwise acted inconsistently with applicable law.

15 (7) The existence or availability of a supported decision-making agreement  
16 does not relieve a health care provider of any legal obligation to provide services to  
17 individuals with disabilities, including the obligation to provide reasonable  
18 accommodations or auxiliary aids and services, including interpretation services  
19 and communication supports to individuals with disabilities under the federal  
20 Americans with Disabilities Act.

21 (8) A supporter acting in the context of a valid supported decision-making  
22 agreement is immune from civil liability for his or her acts or omissions in performing  
23 duties as the supporter if he or she performs the duties in good faith, in conformance  
24 with the supported decision-making agreement or document of the adult with a

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1 functional impairment, and with the degree and prudence that an ordinarily prudent  
2 person exercises in his or her own affairs.

3 **53.32 Reporting of suspected abuse, neglect, or financial exploitation.**

4 (1) If a person who receives a copy of a supported decision-making agreement or is  
5 aware of the existence of a supported decision-making agreement has cause to  
6 believe that the adult with a functional impairment is being abused, neglected, or  
7 financially exploited by the supporter, the person may report under s. 46.90 or 55.043  
8 the alleged abuse, neglect, or financial exploitation.

9 (2) Nothing in this section may be construed as eliminating or limiting a  
10 person's requirement to report under any other statute or regulation.

11 **SECTION 2.** 54.10 (2) (b) 9m. of the statutes is created to read:

12 54.10 (2) (b) 9m. Whether any alternatives to guardianship, including  
13 supported decision-making under ch. 53, have been attempted, and, if applicable,  
14 the degree to which they have been attempted, the length of time they have been  
15 attempted, and whether they have been attempted in a manner sufficient to  
16 demonstrate that alternatives to guardianship are insufficient to enable the  
17 individual to adequately exercise the right or rights in question.

18 **SECTION 3.** 54.10 (3) (a) 4. of the statutes is amended to read:

19 54.10 (3) (a) 4. The individual's need for assistance in decision making or  
20 communication is unable to be met effectively and less restrictively through  
21 appropriate and reasonably available training, education, support services, health  
22 care, assistive devices, a supported decision-making agreement under ch. 53, or  
23 other means that the individual will accept.

24 **SECTION 4.** 54.10 (3) (b) of the statutes is amended to read:

