



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2053/1
SWB:emw

2017 SENATE BILL 552

November 20, 2017 - Introduced by Senators HARSDORF, OLSEN, JOHNSON, MARKLEIN, MILLER, RINGHAND, BEWLEY and HANSEN, cosponsored 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 and SPREITZER. Referred to Committee on Workforce Development, Military Affairs and Senior Issues.

- 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.

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.

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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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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:

