



2017 ASSEMBLY BILL 655

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** Chapter 53 of the statutes is created to read:
5 **CHAPTER 53**
6 **SUPPORTED DECISION-MAKING**
7 **AGREEMENTS**
8 **SUBCHAPTER I**
9 **DEFINITIONS AND**
10 **GENERAL PROVISIONS**

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1 **53.01 Definitions.** In this chapter:

2 **(1)** “Abuse” has the meaning given in s. 46.90 (1) (a).

3 **(2)** “Functional impairment” means any of the following:

4 (a) A physical, developmental, or mental condition that substantially limits one
5 or more of an individual’s major life activities, including any of the following:

6 1. Capacity for independent living.

7 2. Self direction.

8 3. Self care.

9 4. Mobility.

10 5. Communication.

11 6. Learning.

12 (b) Impairment as defined under s. 54.01 (14).

13 (c) Other like incapacities as defined under s. 54.01 (22).

14 **(3)** “Financial exploitation” has the meaning given in s. 46.90 (1) (ed).

15 **(4)** “Health care provider” has the meaning given in s. 155.01 (7).

16 **(5)** “Neglect” has the meaning given in s. 46.90 (1) (f).

17 **(6)** “Supported decision-making” means a process of supporting and
18 accommodating an adult with a functional impairment to enable the adult to make
19 life decisions, including decisions related to where the adult wants to live, the
20 services, supports, and medical care the adult wants to receive, whom the adult
21 wants to live with, and where the adult wants to work, without impeding the
22 self-determination of the adult.

23 **(7)** “Supported decision-making agreement” is an agreement between an adult
24 with a functional impairment and a supporter entered into under this chapter.

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1 **(2)** A supporter is not a surrogate decision maker for the adult with a functional
2 impairment and does not have the authority to sign legal documents on behalf of the
3 adult with a functional impairment or bind the adult with a functional impairment
4 to a legal agreement.

5 **53.12 Authority of supporter.** A supporter may exercise the authority
6 granted to the supporter in the supported decision-making agreement.

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

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

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

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

15 (c) There is a restraining order against the supporter as described under s.
16 813.123.

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

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

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

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

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

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

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

21 (3) A supporter may assist with accessing or obtaining any information on
22 education records under the federal Family Educational Rights and Privacy Act of
23 1974, 20 USC 1232g, if the adult with a functional impairment has signed a release
24 allowing the supporter to access information under this subsection.

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1 I agree and designate that

2 Name of supporter

3 Address of supporter

4 E-mail address of supporter

5 Phone number(s) of supporter

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

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

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

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

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

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

14 Assistance with seeking vocational rehabilitation services and other vocational
15 supports — Yes.... No....

16 The following are other decisions I have specifically identified that I would like
17 assistance with

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

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

23 1. Help me access, collect, or obtain information, including records, relevant to
24 a decision. If I have checked “Yes,” my supporter may help me access, collect, or
25 obtain the type of information specified, including relevant records, but if I have

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1 checked “No,” or I have not checked either “Yes” or “No,” my supporter may not help
2 me access, collect, or obtain that type of information:

3 Medical — Yes.... No....

4 Psychological — Yes.... No....

5 Financial — Yes.... No....

6 Education — Yes.... No....

7 Treatment — Yes.... No....

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

10 2. Help me understand my options so I can make an informed decision.

11 Yes.... No....

12 3. Help me communicate my decision to appropriate persons.

13 Yes.... No....

14 4. Help me access appropriate personal records, including protected health
15 information under the Health Insurance Portability and Accountability Act, the
16 Family Educational Rights and Privacy Act, and other records that may or may not
17 require a release for specific decisions I want to make.

18 Yes.... No....

19 **EFFECTIVE DATE OF SUPPORTED**

20 **DECISION-MAKING AGREEMENT**

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

24 (print) Name of person designating a supporter

25 Signature

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1 Date

CONSENT OF SUPPORTER

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

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

7 Supporter:

8 (print) Name

9 Address

10 E-mail address

11 Phone number(s)

12 Signature

13 Date

STATEMENT AND SIGNATURE

OF WITNESSES OR

SIGNATURE OF NOTARY

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

OPTION I: WITNESSES

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

23 Witness No. 1:

24 (print) Name

25 Address

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1 Phone number(s)

2 Signature

3 Date

4 Witness No. 2:

5 (print) Name

6 Address

7 Phone number(s)

8 Signature

9 Date

10 **OPTION II: NOTARY PUBLIC**

11 State of

12 County of

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

15 Signature of notary

16 (Seal, if any, of notary)

17 Printed name

18 My commission expires:

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

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SUBCHAPTER III

DUTY OF CERTAIN PERSONS

WITH RESPECT TO AGREEMENT

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

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

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

19 (4) Any health care provider that provides health care based on the consent of
20 an adult with a functional impairment, made with supports and services provided
21 through a duly executed supported decision-making agreement, shall be immune
22 from any action alleging that the adult with a functional impairment lacked capacity
23 to provide informed consent unless the entity, custodian, or organization had actual
24 knowledge or notice that the adult with a functional impairment had revoked such

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1 authorization, that the agreement was invalid, or that the supporter had committed
2 abuse, neglect, or financial exploitation as described in s. 53.14 (2) (a).

3 (5) Any public or private entity, custodian, or organization that discloses
4 personal information about an adult with a functional impairment to a supporter
5 who is authorized to access, collect, or obtain or assist the adult with a functional
6 impairment in accessing, collecting, or obtaining that information shall be immune
7 from any action alleging that it improperly or unlawfully disclosed such information
8 to the supporter unless the entity, custodian, or organization had actual knowledge
9 that the adult with a functional impairment had revoked such authorization.

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

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

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

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

18 (d) Otherwise acted inconsistently with applicable law.

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

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1 **(8)** A supporter acting in the context of a valid supported decision-making
2 agreement is immune from civil liability for his or her acts or omissions in performing
3 duties as the supporter if he or she performs the duties in good faith, in conformance
4 with the supported decision-making agreement or document of the adult with a
5 functional impairment, and with the degree and prudence that an ordinarily prudent
6 person exercises in his or her own affairs.

7 **53.32 Reporting of suspected abuse, neglect, or financial exploitation.**

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

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

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

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

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

23 54.10 **(3)** (a) 4. The individual's need for assistance in decision making or
24 communication is unable to be met effectively and less restrictively through
25 appropriate and reasonably available training, education, support services, health

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1 care, assistive devices, a supported decision-making agreement under ch. 53, or
2 other means that the individual will accept.

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

4 54.10 (3) (b) Unless the proposed ward is unable to communicate decisions
5 effectively in any way, the determination under par. (a) may not be based on mere old
6 age, eccentricity, poor judgment, ~~or physical disability~~, or the existence of a supported
7 decision-making agreement.

8 **SECTION 5.** 115.807 (4) of the statutes is created to read:

9 115.807 (4) The local educational agency shall provide the individual and the
10 individual's parents with information on supported decision-making under ch. 53,
11 other alternatives to guardianship, and strategies to remain engaged in the
12 individual's secondary education.

13 (END)