

State of Wisconsin



2017 Assembly Bill 655

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2017 WISCONSIN ACT 345

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

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

SECTION 1. Chapter 53 of the statutes is created to read:

CHAPTER 53
SUPPORTED DECISION-MAKING
AGREEMENTS
SUBCHAPTER I
DEFINITIONS AND
GENERAL PROVISIONS

53.01 Definitions. In this chapter:

- (1) "Abuse" has the meaning given in s. 46.90 (1) (a).
- (2) "Functional impairment" means any of the following:
 - (a) A physical, developmental, or mental condition that substantially limits one or more of an individual's major life activities, including any of the following:
 1. Capacity for independent living.
 2. Self direction.
 3. Self care.
 4. Mobility.
 5. Communication.
 6. Learning.
 - (b) Impairment as defined under s. 54.01 (14).
 - (c) Other like incapacities as defined under s. 54.01 (22).
- (3) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

(4) "Health care provider" has the meaning given in s. 155.01 (7).

(5) "Neglect" has the meaning given in s. 46.90 (1) (f).

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

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

(8) "Supporter" means an adult who is willing to enter into an agreement with 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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Notwithstanding the existence of a supported decision-making agreement, an adult with a functional impairment continues to have unrestricted access to personal information without the assistance of a supporter.

(6) Notwithstanding the existence of a supported decision-making agreement, an adult with a functional impairment is able to request and receive assistance on any decision that is not covered under the supported decision-making agreement at any time.

53.18 Authorization and witnesses. (1) An adult with a functional impairment and his or her supporter entering into a supported decision-making agreement must sign and date the agreement in the presence of 2 or more subscribing witnesses or a notary public.

(2) If the adult with a functional impairment and his or her supporter choose to sign and date the supported decision-making agreement before witnesses, the attesting witnesses must be at least 18 years of age.

53.20 Supported decision-making agreement instrument; form. (1) A supported decision-making agreement is valid if it is in writing, entered into voluntarily as described under s. 53.10, signed and dated as described under s. 53.18, and in substantially the following form:

SUPPORTED
DECISION-MAKING AGREEMENT
APPOINTMENT OF SUPPORTER

I, (insert name), make this agreement voluntarily and of my own free will.

I agree and designate that

Name of supporter

Address of supporter

E-mail address of supporter

Phone number(s) of supporter

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

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

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

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

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

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

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

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

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

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

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

Medical — Yes.... No....

Psychological — Yes.... No....

Financial — Yes.... No....

Education — Yes.... No....

Treatment — Yes.... No....

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

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

Yes.... No....

3. Help me communicate my decision to appropriate persons.

Yes.... No....

4. Help me access appropriate personal records, including protected health information under the Health Insurance Portability and Accountability Act, the Family Educational Rights and Privacy Act, and other records that may or may not require a release for specific deci-

sions I want to make.

Yes.... No....

EFFECTIVE DATE OF SUPPORTED
DECISION-MAKING AGREEMENT

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

(print) Name of person designating a supporter

Signature

Date

CONSENT OF SUPPORTER

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

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

Supporter:

(print) Name

Address

E-mail address

Phone number(s)

Signature

Date

STATEMENT AND SIGNATURE
OF WITNESSES OR
SIGNATURE OF NOTARY

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

OPTION I: WITNESSES

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

Witness No. 1:

(print) Name

Address

Phone number(s)

Signature

Date

Witness No. 2:

(print) Name

Address

Phone number(s)

Signature

Date

OPTION II: NOTARY PUBLIC

State of

County of

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

Signature of notary

(Seal, if any, of notary)

Printed name

My commission expires:

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

SUBCHAPTER III

DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

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

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

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

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

(5) Any public or private entity, custodian, or organization that discloses personal information about an adult with a functional impairment to a supporter who is authorized to access, collect, or obtain or assist the adult with a functional impairment in accessing, collecting, or obtaining that information shall be immune from any action alleging that it improperly or unlawfully disclosed such information to the supporter unless the entity, custo-

dian, or organization had actual knowledge that the adult with a functional impairment had revoked such authorization.

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

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

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

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

(d) Otherwise acted inconsistently with applicable law.

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

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

53.32 Reporting of suspected abuse, neglect, or financial exploitation. (1) 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 adult with a functional impairment is being abused, neglected, or financially exploited by the supporter, the person may report under s. 46.90 or 55.043 the alleged abuse, neglect, or financial exploitation.

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

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

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

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

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

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

54.10 (3) (b) Unless the proposed ward is unable to

communicate decisions effectively in any way, the determination under par. (a) may not be based on mere old age, eccentricity, poor judgment, ~~or~~ physical disability, or the existence of a supported decision-making agreement.

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

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

