



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 345
[2017 Assembly Bill 655]

**Supported Decision-Making
Agreements**

2017 Wisconsin Act 345 creates a new statutory chapter governing supported decision-making agreements, under which an adult with a functional impairment¹ may voluntarily, without coercion, enter into a supported decision-making agreement with a supporter.

AUTHORITY OF A SUPPORTER

Under the Act, an adult with a functional impairment may authorize a supporter to do any of the following:

- Provide supported decision-making to the adult with a functional impairment, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult.
- Assist the adult with a functional impairment in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision, including medical, psychological, financial educational, or treatment records, from any person.
- Assist the adult with a functional impairment in communicating the adult's decisions to appropriate persons.

A supporter may exercise the authority granted to the supporter in the supported decision-making agreement, but the supporter is not a surrogate decision maker for the adult

¹ Under the Act, "functional impairment" means any of the following: (1) a physical, developmental, or mental condition that substantially limits one or more of an individual's major life activities, including capacity for independent living, self direction, self care, mobility, communication, or learning; (2) impairment, as defined under s. 54.01 (14), Stats.; or (3) other like incapacities, as defined under s. 54.01 (22), Stats.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

with a functional impairment. The supporter does not have the authority to bind the adult with a functional impairment to a legal agreement or to sign legal documents on the adult's behalf.

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.

TERM OF SUPPORTED DECISION-MAKING AGREEMENT

A supported decision-making agreement extends until terminated by either party or by the terms of the agreement. The Act specifies certain actions that an adult with a functional impairment may take to revoke and invalidate the supported decision-making agreement at any time. The Act also specifies certain actions that, upon occurrence, automatically terminate a supported decision-making agreement. Under the Act, a supporter may resign by giving notice to the adult with a functional impairment, unless the supported decision-making agreement provides a different method for the supporter's resignation.

SUPPORTER'S ACCESS TO INFORMATION

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. The supporter must ensure the information is kept privileged and confidential, and is not subject to unauthorized access, use, or disclosure. The Act specifies certain types of records that a supporter may access only if the adult with a functional impairment has signed a release allowing the supporter such access. An adult with a functional impairment continues to have unrestricted access to personal information without the assistance of a supporter, and is able to request and receive assistance on any decision that is not covered under the supported decision-making agreement at any time.

EXECUTION AND FORM OF AGREEMENT

An adult with a functional impairment and the supporter must sign and date the supported decision-making agreement in the presence of two or more subscribing adult witnesses or a notary public. A supported decision-making agreement is valid if written, entered into voluntarily, signed and dated, and in substantially the same form as provided in the Act.

RELIANCE ON AGREEMENT AND IMMUNITY

The Act provides that a person who receives the original or a copy of a supported decision-making agreement must 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. The Act grants immunity to a person for acts or omissions done in good faith and in reliance on a supported decision-making agreement.

Under the Act, 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. However, the Act grants health care providers immunity in certain circumstances, unless the entity, custodian, or organization had actual knowledge or notice that

the adult with a functional impairment had revoked authorization, that the agreement was invalid, or that the supporter had committed abuse, neglect, or financial exploitation.

The Act also does not provide health care providers with immunity from actions alleging that a health care provider caused personal injury, acted inconsistently with the expressed wishes of an adult with a functional impairment, failed to provide information to either an adult with a functional impairment or the supporter that would be necessary for informed consent, or otherwise acted inconsistently with applicable law.

The Act further provides that any public or private entity, custodian, or organization that discloses personal information about an adult with a functional impairment to an authorized supporter is immune from any action for improper or unlawful disclosure, unless the entity, custodian, or organization had actual knowledge that the adult with a functional impairment had revoked such authorization.

The Act also generally grants a supporter immunity from civil liability for acts or omissions in performing duties as the supporter if the duties were performed in good faith, in conformance with the supported decision-making agreement, and with the degree and prudence that an ordinarily prudent person exercises in his or her own affairs.

REPORTING OF SUSPECTED ABUSE, NEGLECT, OR FINANCIAL EXPLOITATION

Under the Act, if a person has cause to believe that an adult with a functional impairment is being abused, neglected, or financially exploited by a supporter, the person may report that belief using the elder abuse and adult-at-risk reporting systems provided under state law. The Act neither eliminates nor limits a person's requirement to report under any other statute or regulation.

INFORMATION ON SUPPORTED DECISION-MAKING

The Act requires the Department of Health Services (DHS) to prepare and provide access to a supported decision-making agreement instrument and accompanying information for adults with functional impairments and their family members, education professionals and school districts, health care and social service professionals, county clerks, and local bar associations. The Act allows DHS to charge a reasonable fee for the cost of preparation and distribution.

Under the Act, when a child with a disability reaches the age of 18, the local educational agency must provide the individual and the individual's parents with information on supported decision-making, other alternatives to guardianship, and strategies to remain engaged in the individual's secondary education.

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