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WHAT TO KNOW ABOUT SB 380: SUPPORTED DECISION-MAKING LEGISLATION

What is Supported Decision-Making (SDM)?

Supported Decision-Making is a way to accommodate the decision-making process. Just as there are supports like wheelchairs to help someone get around, we can support someone who might need help in making choices on their own. In SDM, the person chooses supporters (trusted friends, family, or caregivers) to help with the decision-making process, but the person makes the final decision. The supporters and the types of support needed are often written down into a supported decision-making agreement. There are currently 7 states that legislate SDM agreements (AK, DC, DE, ME, MO, TX, WI) and 3 that recognize SDM as a valid less restrictive option (AZ, NY, TN). There are at least two other states currently considering SDM legislation (MA, MD).

What does SB 380 cover?

I. Less Restrictive Alternatives (LRAs)

- Defines what a *less restrictive alternative* is, based on similar definitions used in seven states (AZ, ME, MN, MO, NY, TN, TX) and in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA). Less restrictive alternatives means an approach to meeting a person's needs that restricts fewer rights. It includes (but is not limited to) supported decision-making, technological assistance, representative payees, health care representatives, and Power of Attorney documents.
- Adds a requirement into IC 29-3-5-1 that a petition for appointment of guardian also include a statement about whether LRAs were considered or previously used and why a LRA would not be appropriate here. It does not require that LRAs be tried before filing a petition, it just allows for a Court to have additional information.
- Adds a requirement into IC 29-3-9-6 that the bi-annual account submitted to the court should include a statement about the continued appropriateness of guardianship and whether any LRAs might be appropriate. Again, LRAs are not required to be attempted.

II. Recognition of Supported Decision Making Agreements (new chapter IC 29-3-14)

- Defines Supported Decision-Making Agreement based on definitions used by the National Resource Center on Supported Decision-Making, and five other states (MA, MD, DC, TX, WI).
- Defines supporters.
- States the requirements for entering into a SDM Agreement.
- Describes the responsibilities and prohibitions of a supporter. Expressly states that a supporter is not a surrogate decision-maker for the adult.
- Describes the components to make a valid SDM Agreement.
- Describes when a SDM Agreement terminates.
- Provides third party protections for relying on or declining to honor a SDM Agreement.
- Provides protections from liability for supporters, except in cases of fraud, misrepresentation, recklessness, or willful or wanton misconduct.
- Reinforces requirement for people to report abuse, neglect, or exploitation of the adult.

What problems does SB 380 solve?

- **Third party recognition of a less restrictive option.** Sometimes people with disabilities, conditions of aging, or those showing cognitive impairment or decline have their ability to make decisions questioned by doctors, financial institutions or other service providers. This can lead to an unnecessary or overly broad guardianship as a means to access those services. By allowing people the option to use SDM Agreements, the providers can have greater confidence that the person has made an informed decision, and the person remains in greater control over life decisions that they make using their supporters.
- **Provides structure and consistency for SDM Agreements.** Having requirements for SDM Agreements will decrease the likelihood of exploitation, and will provide greater clarity for third parties who encounter one.
- **Creates another tool for people to use.** Having options allows for people to have individualized support in the least restrictive manner possible. Without legal recognition of SDM agreements, people will be forced to use a more intrusive level of intervention that may not be necessary. Having options allows for greater preservations of the person's civil rights.
- **Gives Courts more information in the petition.** Courts want to make sure that guardianships are only granted when appropriate. Providing a statement about less restrictive alternatives in the petition will give Courts greater and easier access to this information.

How is SDM different from other legal documents like Powers of Attorney?

In Supported Decision-Making, the person makes the final decision. Powers of Attorney (POAs), depending on how they are drafted, allows a person to give decision-making authority to someone else in certain situations or at certain times. SDM, on the other hand, is an entirely different type of assistance. It does not grant anyone else decision-making authority, but rather structures the supports a person needs in order to make their own decisions.

What protections are there to keep people safe from abuse, neglect, or exploitation?

Supporting independence and self-determination can help decrease the likelihood of abuse, neglect, or exploitation. There is no guarantee of safety under any arrangement, including guardianship. But that is not a reason to limit the options available for people to live their best lives. Protection from future uncertain harm must be carefully balanced so as not to unnecessarily infringe on someone's civil rights. Studies have shown people are less likely to experience abuse, neglect or exploitation when they are empowered. The consequences of not being allowed to make decisions, or having one's decisions ignored, has been associated with increased likelihood of depression, anxiety, loneliness, and may worsen psychological symptoms. It is better to teach someone how to identify toxic, abusive, or exploitive behavior than to rely on someone always being available to do that for them.

For more information visit Indiana Disability Rights' website on
Supported Decision-Making at: on.in.gov/INSDM

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