AN ACT
RELATING TO PROBATE PRACTICE AND PROCEDURE -- SUPPORTED DECISION-MAKING ACT

Introduced By: Representatives Craven, McEntee, and McKiernan

Date Introduced: March 27, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND GOVERNMENT" is hereby amended by adding thereto the following chapter:

CHAPTER 66.13
SUPPORTED DECISION-MAKING ACT


This chapter shall be known and may be cited as the "Supported Decision-Making Act."


(a) The purpose of this chapter is to achieve all of the following:

1. Provide assistance in gathering and assessing information, making informed decisions, and communicating decisions for adults who would benefit from decision-making assistance;

2. Give supporters legal status to be with the adult and participate in discussions with others when the adult is making decisions or attempting to obtain information;

3. Enable supporters to assist in making and communicating decisions for the adult but not substitute as the decision maker for that adult; and

4. Establish the use of supported decision-making as an alternative to guardianship.

(b) This chapter is to be administered and interpreted in accordance with all of the following principles:
(1) All adults should be able to choose to live in the manner they wish and to accept or refuse support, assistance, or protection;

(2) All adults should be able to be informed about and participate in the management of their affairs; and

(3) The values, beliefs, wishes, cultural norms, and traditions that adults hold, should be respected in supporting adults to manage their affairs.


For the purposes of this chapter:

(1) "Adult" means an individual who is eighteen (18) years of age or older.

(2) "Affairs" means personal, health care, and matters arising in the course of activities of daily living and including those health care and personal affairs in which adults make their own health care decisions, including monitoring their own health; obtaining, scheduling, and coordinating health and support services; understanding health care information and options; and making personal decisions, including those to provide for their own care and comfort.

(3) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person.

(4) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(5) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, or stepsibling.

(6) "Person" means an adult; health care institution; health care provider; corporation; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Principal" means an adult with a disability who seeks to enter, or has entered, into a supported decision-making agreement with a supporter under this chapter.

(8) "Supported decision-making" means a process of supporting and accommodating an adult 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, where the adult wants to work, without impeding the self-determination of the adult.

(9) "Supported decision-making agreement" or "the agreement" means an agreement between a principal and a supporter entered into under this chapter.

(10) "Supporter" means a person who is named in a supported decision-making agreement.
agreement and is not prohibited from acting pursuant to § 42-66.13-6(b).

(11) "Support services" means a coordinated system of social and other services supplied by private, state, institutional, or community providers designed to help maintain the independence of an adult, including any of the following:

(i) Homemaker-type services, including house repair, home cleaning, laundry, shopping, and meal-provision;

(ii) Companion-type services, including transportation, escort, and facilitation of written, oral, and electronic communication;

(iii) Visiting nurse and attendant care;

(iv) Health care provision;

(v) Physical and psychosocial assessments;

(vi) Legal assessments and advisement;

(vii) Education and educational assessment and advisement;

(viii) Hands-on treatment or care, including assistance with activities of daily living such as bathing, dressing, eating, range of motion, toileting, transferring, and ambulation;

(ix) Care planning; and

(x) Other services needed to maintain the independence of an adult.


(a) All adults are presumed to be capable of managing their affairs and to have legal capacity.

(b) The manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the adult's affairs.

(c) Execution of a supported decision-making agreement may not be used as evidence of incapacity and does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement.


(a) A supported decision-making agreement must include all of the following:

(1) Designation of at least one supporter;

(2) The types of decisions for which the supporter is authorized to assist; and

(3) The types of decisions, if any, for which the supporter may not assist.

(b) A supported decision-making agreement may include any of the following:

(i) Designation of more than one supporter;

(ii) Provision for an alternate to act in the place of a supporter in such circumstances as may be specified in the agreement; and
(iii) Authorization for a supporter to share information with any other supporter named in the agreement, as a supporter believes is necessary.

(c) A supported decision-making agreement is valid only if all of the following occur:

(1) The agreement is in a writing that contains the elements of the form contained in § 42-66.13-10;

(2) The agreement is dated; and

(3) Each party to the agreement signed the agreement in the presence of two (2) adult witnesses, or before a notary public.

(d) The two (2) adult witnesses required by subsection (c)(3) of this section may not be any of the following:

(1) A supporter for the principal;

(2) An employee or agent of a supporter named in the supported decision-making agreement;

(3) A paid provider of services to the principal; and

(4) Any person who does not understand the type of communication the principal uses, unless an individual who understands the principal's means of communication is present to assist during the execution of the supported decision-making agreement.

(e) A supported decision-making agreement must contain a separate declaration signed by each supporter named in the agreement indicating all of the following:

(1) The supporter's relationship to the principal;

(2) The supporter's willingness to act as a supporter; and

(3) The supporter's acknowledgement of the role of a supporter under this chapter.

(f) A supported decision-making agreement may authorize a supporter to assist the principal to decide whether to give or refuse consent to a life sustaining procedure pursuant to the provisions of chapters 4.10 and 4.11 of title 23.

(g) A principal or a supporter may revoke a supported decision-making agreement at any time in writing and with notice to the other parties to the agreement.


(a) Except as otherwise provided by a supported decision-making agreement, a supporter may do all of the following:

(1) Assist the principal in understanding information, options, responsibilities, and consequences of the principal's life decisions, including those decisions relating to the principal's affairs or support services;

(2) Help the principal access, obtain, and understand any information that is relevant to
any given life decision, including medical, psychological, or educational decisions, or any

treatment records or records necessary to manage the principal’s affairs or support services;

(3) Assist the principal in finding, obtaining, making appointments for, and implementing

the principal’s support services or plans for support services;

(4) Help the principal monitor information about the principal’s affairs or support

services, including keeping track of future necessary or recommended services; and

(5) Ascertain the wishes and decisions of the principal, assist in communicating those

wishes and decisions to other persons, and advocate to ensure that the wishes and decisions of the

principal are implemented.

(b) Any of the following are disqualified from acting as a supporter:

(1) A person who is an employer or employee of the principal, unless the person is an

immediate family member of the principal;

(2) A person directly providing paid support services to the principal, unless the person is

an immediate family member of the principal; and

(3) An individual against whom the principal has obtained an order of protection from

abuse or an individual who is the subject of a civil or criminal order prohibiting contact with the

principal.

(c) A supporter shall act with the care, competence, and diligence ordinarily exercised by

individuals in similar circumstances, with due regard either to the possession of, or lack of,
special skills or expertise.


A decision or request made or communicated with the assistance of a supporter in

conformity with this chapter shall be recognized for the purposes of any provision of law as the

decision or request of the principal and may be enforced by the principal or supporter in law or

equity on the same basis as a decision or request of the principal.


(a) A supporter may assist the principal with obtaining any information to which the

principal is entitled, including, with a signed and dated specific consent, protected health

information under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-

191], educational records under the Family Educational Rights and Privacy Act of 1974 [20


(b) The supporter shall ensure all information collected on behalf of the principal under

this section is kept privileged and confidential, as applicable; is not subject to unauthorized

access, use, or disclosure; and is properly disposed of when appropriate.

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 principal, who is an adult with a developmental disability or an elder, is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation pursuant to §§ 40.1-27-02, and 42-66-8.

42-66.13-10. Form of supported decision-making agreement.

A supported decision-making agreement may be in any form not inconsistent with the following form and the other requirements of this chapter. Use of the following form is presumed to meet statutory provisions.

SUPPORTED DECISION-MAKING AGREEMENT

Appointment of Supporter

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

I agree and designate that:

Name:____________________

Address:____________________

Phone Number:_______________

E-mail Address:_______________

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N  Obtaining food, clothing, and shelter

Y/N  Taking care of my health

Y/N  Other (specify):

______________________________________________________________________________

______________________________________________________________________________

I agree and designate that:

Name:____________________

Address:____________________

Phone Number:_______________

E-mail Address:_______________

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N  Obtaining food, clothing, and shelter

Y/N  Taking care of my physical health
Y/N  Other (specify):

My supporter(s) is (are) not allowed to make decisions for me. To help me with my decisions, my supporter(s) may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, educational, or treatment records;

2. Help me gather and complete appropriate authorizations and releases;

3. Help me understand my options so I can make an informed decision; and

4. Help me communicate my decision to appropriate persons.

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.

Signed this ................day of ................, 20.............

Consent of Supporter

I, ...................................... (name of supporter), consent to act as a supporter under this agreement, and acknowledge my responsibilities under chapter 66.13 of title 42.

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..............................................................................................................................
(Signature of supporter) ........................................ (Printed name of supporter)
My relationship to the principal is: ..........................................................

Consent of the Principal

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..............................................................................................................................
(My signature) .................................................. (My printed name)

Witnesses or Notary

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..............................................................................................................................
(Witness 1 signature) ............................................ (Printed name of witness 1)
...............................................................................................................................
..............................................................................................................................
(Witness 2 signature) ............................................ (Printed name of witness 2)
Or

State of ...........................................

County of ....................................

This document was acknowledged before me on (date) by

........................................................................... and ...........................................................................

(Name of adult with a disability) ........................................ (Name of supporter)

..............................................................................................

(Signature of notarial officer)

(Seal, if any, of notary)

..............................................................................................

(Printed name)

My commission expires: ................................................

SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROBATE PRACTICE AND PROCEDURE -- SUPPORTED DECISION-MAKING ACT

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1 This act would establish the supported decision-making act as a less restrictive alternative to guardianship.
2 This act would take effect upon passage.

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