

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 149

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO HEALTH; ENACTING THE SUPPORTED DECISION-MAKING ACT;
PROVIDING REQUIREMENTS FOR SUPPORTED DECISION-MAKING
AGREEMENTS; PROVIDING DUTIES FOR SUPPORTERS; CREATING REPORTING
REQUIREMENTS; CREATING A SUPPORTED DECISION-MAKING PROGRAM
WITHIN THE OFFICE OF GUARDIANSHIP IN THE DEVELOPMENTAL
DISABILITIES COUNCIL; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Supported Decision-Making Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Supported Decision-Making Act:

A. "adult" means a person who is at least eighteen
years of age;

B. "decision-maker" means an adult who seeks to

1 enter, or has entered, into a supported decision-making
2 agreement with one or more supporters pursuant to the Supported
3 Decision-Making Act;

4 C. "decision-making support" means assistance in
5 understanding the options, responsibilities and consequences of
6 a decision-maker's life decisions without making those
7 decisions on behalf of the decision-maker;

8 D. "supported decision-making agreement" means an
9 agreement entered into between a decision-maker and a supporter
10 pursuant to the provisions of the Supported Decision-Making
11 Act; and

12 E. "supporter" means an adult who has entered into
13 a supported decision-making agreement with a decision-maker
14 pursuant to the Supported Decision-Making Act.

15 SECTION 3. [NEW MATERIAL] SUPPORTED DECISION-MAKING
16 AGREEMENTS--SCOPE OF AGREEMENTS.--A decision-maker may
17 voluntarily, without undue influence or coercion, enter into a
18 supported decision-making agreement with one or more supporters
19 under which the decision-maker authorizes the supporter to do
20 any or all of the following:

- 21 A. provide decision-making support;
- 22 B. assist the decision-maker in accessing,
23 collecting and obtaining information that is relevant to a
24 given life decision, including medical, psychological,
25 financial, educational or treatment records, from any person;

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1 C. assist the decision-maker in understanding the
2 information described in Subsection B of this section; and

3 D. assist the decision-maker in communicating the
4 decision-maker's decisions to appropriate persons.

5 SECTION 4. [NEW MATERIAL] SUPPORTED DECISION-MAKING
6 AGREEMENT REQUIREMENTS.--

7 A. A supported decision-making agreement may be in
8 any form but shall:

- 9 (1) be in writing;
- 10 (2) be dated;
- 11 (3) be signed voluntarily, without coercion or
12 undue influence, by the decision-maker and the supporter;
- 13 (4) designate a supporter;
- 14 (5) list the types of decisions with which the
15 supporter is authorized to assist the decision-maker;
- 16 (6) list the types of decisions, if any, with
17 which the supporter is not authorized to assist the decision-
18 maker; and
- 19 (7) contain a consent signed by the supporter
20 indicating the supporter's:
- 21 (a) relationship to the decision-maker;
- 22 (b) willingness to act as a supporter;
- 23 and
- 24 (c) acknowledgment of the duties of a
25 supporter.

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1 B. Each party to a supported decision-making
2 agreement shall sign the agreement in the presence of at least
3 two adult witnesses or a notary public.

4 **SECTION 5. [NEW MATERIAL] PRESUMPTION OF CAPACITY.--**

5 A. All decision-makers are presumed to have
6 capacity and to be capable of managing their affairs unless
7 otherwise determined by a court. A diagnosis of mental
8 illness, intellectual disability or developmental disability,
9 of itself, does not void the presumption of capacity.

10 B. The manner in which a decision-maker
11 communicates with others is not grounds for determining that
12 the decision-maker is incapable of managing the decision-
13 maker's own affairs.

14 C. The execution of a supported decision-making
15 agreement may not be used as evidence of capacity or incapacity
16 in any civil or criminal proceeding and does not preclude the
17 ability of the decision-maker who has entered into a supported
18 decision-making agreement to act independently of the
19 agreement.

20 **SECTION 6. [NEW MATERIAL] SUPPORTER DUTIES AND**
21 **AUTHORITY--SUPPORTER PROHIBITIONS.--**

22 A. A supporter shall:
23 (1) act in good faith;
24 (2) act with the care, competence and
25 diligence ordinarily exercised by supporters in similar

1 circumstances;

2 (3) act only within the scope of authority
3 granted in the supported decision-making agreement;

4 (4) avoid self-dealing; and

5 (5) support the will and preference of the
6 decision-maker rather than the supporter's opinion of the
7 decision-maker's best interests.

8 B. A supporter is prohibited from:

9 (1) making decisions on behalf of the
10 decision-maker;

11 (2) obtaining, without the consent of the
12 decision-maker, information that is not reasonably related to
13 matters with which the supporter is authorized to assist
14 pursuant to the supported decision-making agreement; and

15 (3) using, without the consent of the
16 decision-maker, information acquired for a purpose other than
17 assisting the decision-maker to make a decision under the
18 supported decision-making agreement.

19 SECTION 7. [NEW MATERIAL] SUPPORTER NOT A FIDUCIARY
20 AGENT.--A supporter is not a fiduciary agent of the decision-
21 maker.

22 SECTION 8. [NEW MATERIAL] SUPPORTER DISQUALIFICATIONS.--
23 The following persons are disqualified from acting as a
24 supporter:

25 A. an individual who is the subject of a civil or

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1 criminal order prohibiting contact with the decision-maker;

2 B. an individual who has been placed on the state's
3 employee abuse registry;

4 C. an individual who has been convicted of a crime
5 involving violence or dishonesty within the preceding ten
6 years; and

7 D. an individual who is currently incarcerated.

8 SECTION 9. [NEW MATERIAL] ACCESS TO PERSONAL
9 INFORMATION.--

10 A. If a supporter assists a decision-maker in
11 accessing, collecting or obtaining personal information,
12 including financial information, protected health information
13 under the federal Health Insurance Portability and
14 Accountability Act of 1996 or educational records under the
15 federal Family Educational Rights and Privacy Act of 1974, the
16 supporter shall ensure that the information is kept privileged
17 and confidential, as applicable, and is not subject to
18 unauthorized access, use or disclosure.

19 B. The existence of a supported decision-making
20 agreement does not preclude a decision-maker from seeking
21 personal information without the assistance of the supporter.

22 SECTION 10. [NEW MATERIAL] THIRD PARTY RELIANCE ON
23 SUPPORTED DECISION-MAKING AGREEMENT.--A person who receives an
24 original or a copy of a supported decision-making agreement
25 shall rely on the agreement.

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1 SECTION 11. [NEW MATERIAL] RECOGNITION OF DECISIONS MADE
2 WITH ASSISTANCE OF SUPPORTER.--A decision or request made or
3 communicated with the assistance of a supporter in conformity
4 with the Supported Decision-Making Act shall be recognized for
5 the purposes of any provision of law as the decision or request
6 of the decision-maker.

7 SECTION 12. [NEW MATERIAL] TERM OF SUPPORTED DECISION-
8 MAKING AGREEMENT--TERMINATION OR REVOCATION OF AGREEMENT.--

9 A. Except as provided by Subsection B of this
10 section, the supported decision-making agreement extends until
11 terminated by either party or by the terms of the agreement.

12 B. The supported decision-making agreement is
13 terminated as to a particular supporter if:

14 (1) the adult protective services division of
15 the aging and long-term services department finds that the
16 decision-maker has been abused, neglected or exploited by the
17 supporter;

18 (2) the supporter is the subject of a civil or
19 criminal order prohibiting contact with the decision-maker;

20 (3) the supporter has been placed on the
21 state's employee abuse registry;

22 (4) the supporter has been convicted of a
23 crime involving violence or dishonesty;

24 (5) the supporter is incarcerated;

25 (6) the decision-maker gives notice to the

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1 supporter orally, in writing, through an assistive technology
2 device or by any other means or act showing a specific intent
3 to terminate the agreement; or

4 (7) the supporter provides written notice of
5 the supporter's resignation to the decision-maker.

6 SECTION 13. [NEW MATERIAL] REPORTING OF SUSPECTED ABUSE,
7 NEGLECT OR EXPLOITATION.--If a person who receives a copy of a
8 supported decision-making agreement or is aware of the
9 existence of a supported decision-making agreement has cause to
10 believe that the decision-maker is being abused, neglected or
11 exploited by the supporter, the person shall report the alleged
12 abuse, neglect or exploitation to the aging and long-term
13 services department's adult protective services division's
14 statewide intake hotline.

15 SECTION 14. [NEW MATERIAL] SUPPORTED DECISION-MAKING
16 PROGRAM--CREATED--PROGRAM DUTIES.--

17 A. The "supported decision-making program" is
18 created within the office of guardianship in the developmental
19 disabilities council.

20 B. The supported decision-making program may:

21 (1) provide information to adults interested
22 in entering into supported decision-making agreements;

23 (2) facilitate adults in forming, executing
24 and terminating supported decision-making agreements;

25 (3) monitor supported decision-making

1 agreements to determine if the agreement meets statutory
2 requirements;

3 (4) provide resources and assistance for a
4 decision-maker who believes a supporter is acting outside the
5 scope of the supported decision-making agreement; and

6 (5) provide resources to any individual who is
7 seeking information on reporting suspected abuse, neglect or
8 exploitation of the decision-maker.

9 SECTION 15. APPROPRIATION.--Two hundred eighty-nine
10 thousand dollars (\$289,000) is appropriated from the general
11 fund to the developmental disabilities council for expenditure
12 in fiscal year 2026 to carry out the provisions of the
13 Supported Decision-Making Act and to hire full-time employees
14 and contract support to create and administer the supported
15 decision-making program in the office of guardianship in the
16 developmental disabilities council. Any unexpended or
17 unencumbered balance remaining at the end of fiscal year 2026
18 shall revert to the general fund.