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SENATE BILL 89

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Siah Correa Hemphill

AN ACT

RELATING TO HEALTH; ENACTING THE SUPPORTED DECISION-MAKING ACT;
PROVIDING REQUIREMENTS FOR SUPPORTED DECISION-MAKING
AGREEMENTS; PROVIDING DUTIES FOR SUPPORTERS; PROVIDING A
LIMITATION OF LIABILITY; 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;

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1 B. "supported decision-maker" means an adult who
2 seeks to enter, or has entered, into a supported decision-
3 making agreement with one or more supporters pursuant to the
4 Supported Decision-Making Act;

5 C. "supported decision-making agreement" means an
6 agreement entered into between a supported decision-maker and a
7 supporter pursuant to the provisions of the Supported Decision-
8 Making Act; and

9 D. "supporter" means an adult who has entered into
10 a supported decision-making agreement with a supported
11 decision-maker pursuant to the Supported Decision-Making Act.

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

18 A. provide supported decision-making, including
19 assistance in understanding the options, responsibilities and
20 consequences of the supported decision-maker's life decisions
21 without making those decisions on behalf of the supported
22 decision-maker;

23 B. assist the supported decision-maker in
24 accessing, collecting and obtaining information that is
25 relevant to a given life decision, including medical,

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1 psychological, financial, educational or treatment records,
2 from any person;

3 C. assist the supported decision-maker in
4 understanding the information described in Subsection B of this
5 section; and

6 D. assist the supported decision-maker in
7 communicating the supported decision-maker's decisions to
8 appropriate persons.

9 SECTION 4. [NEW MATERIAL] SUPPORTED DECISION-MAKING
10 AGREEMENT REQUIREMENTS.--

11 A. A supported decision-making agreement may be in
12 any form but shall:

13 (1) be in writing;
14 (2) be dated;
15 (3) be signed voluntarily, without coercion or
16 undue influence, by the supported decision-maker and the
17 supporter;

18 (4) designate a supporter;
19 (5) list the types of decisions with which the
20 supporter is authorized to assist the supported decision-maker;

21 (6) list the types of decisions, if any, with
22 which the supporter is not authorized to assist the supported
23 decision-maker; and

24 (7) contain a consent signed by the supporter
25 indicating the supporter's:

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- 1 (a) relationship to the supported
2 decision-maker;
3 (b) willingness to act as a supporter;
4 and
5 (c) acknowledgment of the duties of a
6 supporter.

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

10 SECTION 5. [NEW MATERIAL] PRESUMPTION OF CAPACITY.--

11 A. All supported decision-makers are presumed to
12 have capacity and to be capable of managing their affairs
13 unless otherwise determined by a court. A diagnosis of mental
14 illness, intellectual disability or developmental disability,
15 of itself, does not void the presumption of capacity.

16 B. The manner in which a supported decision-maker
17 communicates with others is not grounds for determining that
18 the supported decision-maker is incapable of managing the
19 supported decision-maker's own affairs.

20 C. The execution of a supported decision-making
21 agreement may not be used as evidence of capacity or incapacity
22 in any civil or criminal proceeding and does not preclude the
23 ability of the supported decision-maker who has entered into a
24 supported decision-making agreement to act independently of the
25 agreement.

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1 SECTION 6. [NEW MATERIAL] SUPPORTER DUTIES AND
2 AUTHORITY--SUPPORTER PROHIBITIONS.--

- 3 A. A supporter shall:
- 4 (1) act in good faith;
 - 5 (2) act with the care, competence and
6 diligence ordinarily exercised by supporters in similar
7 circumstances;
 - 8 (3) act only within the scope of authority
9 granted in the supported decision-making agreement;
 - 10 (4) avoid self-dealing; and
 - 11 (5) support the will and preference of the
12 supported decision-maker rather than the supporter's opinion of
13 the supported decision-maker's best interests.

- 14 B. A supporter is prohibited from:
- 15 (1) making decisions on behalf of the
16 supported decision-maker;
 - 17 (2) obtaining, without the consent of the
18 supported decision-maker, information that is not reasonably
19 related to matters with which the supporter is authorized to
20 assist pursuant to the supported decision-making agreement; and
 - 21 (3) using, without the consent of the
22 supported decision-maker, information acquired for a purpose
23 other than assisting the supported decision-maker to make a
24 decision under the supported decision-making agreement.

25 SECTION 7. [NEW MATERIAL] SUPPORTER NOT A FIDUCIARY

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1 AGENT.--A supporter is not a fiduciary agent of the supported
2 decision-maker.

3 SECTION 8. [NEW MATERIAL] SUPPORTER DISQUALIFICATIONS.--

4 The following persons are disqualified from acting as a
5 supporter:

6 A. an individual who is the subject of a civil or
7 criminal order prohibiting contact with the supported decision-
8 maker;

9 B. an individual who has been placed on the
10 department of health's employee abuse registry;

11 C. an individual who has been convicted of a crime
12 involving violence or dishonesty within the preceding ten
13 years; and

14 D. an individual who is currently incarcerated.

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

17 A. If a supporter assists a supported decision-
18 maker in accessing, collecting or obtaining personal
19 information, including financial information, protected health
20 information under the federal Health Insurance Portability and
21 Accountability Act of 1996 or educational records under the
22 federal Family Educational Rights and Privacy Act of 1974, the
23 supporter shall ensure that the information is kept privileged
24 and confidential, as applicable, and is not subject to
25 unauthorized access, use or disclosure.

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1 B. The existence of a supported decision-making
2 agreement does not preclude a supported decision-maker from
3 seeking personal information without the assistance of the
4 supporter.

5 **SECTION 10. [NEW MATERIAL] THIRD PARTY RELIANCE ON**
6 **SUPPORTED DECISION-MAKING AGREEMENT--LIMITATION OF LIABILITY.--**

7 A. A person who receives an original or a copy of a
8 supported decision-making agreement shall rely on the
9 agreement.

10 B. A person is not subject to civil or criminal
11 liability for an act or omission done in good faith and in
12 reliance on a supported decision-making agreement or in
13 complying with or attempting to comply with the provisions of
14 the Supported Decision-Making Act.

15 C. A supporter is not subject to the provisions of
16 this section.

17 **SECTION 11. [NEW MATERIAL] RECOGNITION OF DECISIONS MADE**
18 **WITH ASSISTANCE OF SUPPORTER.--**A decision or request made or
19 communicated with the assistance of a supporter in conformity
20 with the Supported Decision-Making Act shall be recognized for
21 the purposes of any provision of law as the decision or request
22 of the supported decision-maker.

23 **SECTION 12. [NEW MATERIAL] TERM OF SUPPORTED DECISION-**
24 **MAKING AGREEMENT--TERMINATION OR REVOCATION OF AGREEMENT.--**

25 A. Except as provided by Subsection B of this

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1 section, the supported decision-making agreement extends until
2 terminated by either party or by the terms of the agreement.

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

5 (1) the adult protective services division of
6 the aging and long-term services department finds that the
7 supported decision-maker has been abused, neglected or
8 exploited by the supporter;

9 (2) the supporter is the subject of a civil or
10 criminal order prohibiting contact with the supported decision-
11 maker;

12 (3) the supporter has been placed on the
13 department of health's employee abuse registry;

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

16 (5) the supporter is incarcerated;

17 (6) the supported decision-maker gives notice
18 to the supporter orally, in writing, through an assistive
19 technology device or by any other means or act showing a
20 specific intent to terminate the agreement; or

21 (7) the supporter provides written notice of
22 the supporter's resignation to the supported decision-maker.

23 SECTION 13. [NEW MATERIAL] REPORTING OF SUSPECTED ABUSE,
24 NEGLECT OR EXPLOITATION.--If a person who receives a copy of a
25 supported decision-making agreement or is aware of the

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1 existence of a supported decision-making agreement has cause to
2 believe that the supported decision-maker is being abused,
3 neglected or exploited by the supporter, the person shall
4 report the alleged abuse, neglect or exploitation to the aging
5 and long-term services department's adult protective services
6 division's statewide intake hotline.

7 SECTION 14. [NEW MATERIAL] SUPPORTED DECISION-MAKING
8 PROGRAM--CREATED--PROGRAM DUTIES.--

9 A. The "supported decision-making program" is
10 created within the office of guardianship in the developmental
11 disabilities council.

12 B. The supported decision-making program may:

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

15 (2) review supported decision-making
16 agreements and help determine if the agreement meets statutory
17 requirements;

18 (3) provide resources for a supported
19 decision-maker who believes a supporter is acting outside the
20 scope of the supported decision-maker's and the supporter's
21 supported decision-making agreement; and

22 (4) provide resources to any individual who is
23 seeking information on reporting suspected abuse, neglect or
24 exploitation of the supported decision-maker.

25 SECTION 15. APPROPRIATION.--One hundred eighty-nine

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1 thousand dollars (\$189,000) is appropriated from the general
2 fund to the developmental disabilities council for expenditure
3 in fiscal year 2024 to carry out the provisions of the
4 Supported Decision-Making Act and to hire a full-time employee
5 and contract support to create and administer the supported
6 decision-making program in the office of guardianship in the
7 developmental disabilities council. Any unexpended or
8 unencumbered balance remaining at the end of fiscal year 2024
9 shall revert to the general fund.

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