

## HB0197S01 compared with HB0197

~~{deleted text}~~ shows text that was in HB0197 but was deleted in HB0197S01.

inserted text shows text that was not in HB0197 but was inserted into HB0197S01.

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Representative Marsha Judkins proposes the following substitute bill:

### REQUIREMENTS FOR SUPPORTED ~~{DECISION-~~ ~~MAKING}~~ DECISION-MAKING

#### AGREEMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marsha Judkins**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses supported decision-making agreements and guardianship.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions concerning the rights of certain individuals who are under a court-ordered guardianship;
- ▶ prescribes the principles by which provisions related to supported decision-making agreements should be interpreted;

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- ▶ describes the requirements for a supported decision-making agreement;
- ▶ authorizes the use of a supported decision-making agreement by certain individuals, subject to the permission of an individual's guardian or conservator if the supported decision-making agreement includes an area over which a court has granted authority to the guardian or conservator;
- ▶ describes the duties of an individual who is a supporter under a supported decision-making agreement;
- ▶ provides that a supported decision-making agreement may be revoked or terminated, with certain conditions;
- ▶ describes how a supported decision-making agreement interacts with and affects other laws and principles; and
- ▶ provides protections for a person who relies, in good faith, on the provisions of a supported decision-making agreement.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**75-1-201**, as last amended by Laws of Utah 2013, Chapter 364

**75-5-301.5**, as enacted by Laws of Utah 2022, Chapter 358 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 358

**75-5-312**, as last amended by Laws of Utah 2022, Chapter 358 and repealed and reenacted by Laws of Utah 2022, Chapter 441 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 358

**75-5-417**, as last amended by Laws of Utah 2022, Chapter 358

#### ENACTS:

**75-5-701**, Utah Code Annotated 1953

**75-5-702**, Utah Code Annotated 1953

**75-5-703**, Utah Code Annotated 1953

**75-5-704**, Utah Code Annotated 1953

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75-5-705, Utah Code Annotated 1953

75-5-706, Utah Code Annotated 1953

75-5-707, Utah Code Annotated 1953

75-5-708, Utah Code Annotated 1953

75-5-709, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **75-1-201** is amended to read:

**75-1-201. General definitions.**

Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in

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beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. For the purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

(12) "Disability" means cause for a protective order as described by Section 75-5-401.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this

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provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

(15) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

(16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(17) "Foreign personal representative" means a personal representative of another jurisdiction.

(18) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(19) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, a supported decision-making agreement, or a dispositive, appointive, or nominative instrument of any similar type.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

(21) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated" or "incapacity" is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with [~~appropriate technological~~] assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:

- (a) receive and evaluate information;
- (b) make and communicate decisions; or
- (c) provide for necessities such as food, shelter, clothing, health care, or safety.

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(23) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means descendant as defined in Subsection (9).

(26) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(29) "Minor" means a person who is under 18 years [~~of age~~] old.

(30) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(32) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(33) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster

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parent, or grandparent.

(34) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(35) "Person" means an individual or an organization.

(36) (a) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(b) "General personal representative" excludes special administrator.

(37) "Petition" means a written request to the court for an order after notice.

(38) "Proceeding" includes action at law and suit in equity.

(39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(40) "Protected person" means a person for whom a conservator has been appointed. A "minor protected person" means a minor for whom a conservator has been appointed because of minority.

(41) "Protective proceeding" means a proceeding described in Section 75-5-401.

(42) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(43) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

(44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(45) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a

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will:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic symbol, sound, or

process.

(47) "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.

(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.

(51) "Supervised administration" refers to the proceedings described in Title 75, Chapter 3, Part 5, Supervised Administration.

(52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security Registration Act, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54) "Testator" includes an individual of either sex.

(55) "Trust" includes a health savings account, as defined in Section 223, Internal Revenue Code, any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers,



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custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(56) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.

(57) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

(58) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

### Section 2. Section 75-5-301.5 is amended to read:

#### **75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.**

(1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:

- (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding;
- (b) receive a copy of all documents filed in a guardianship proceeding;
- (c) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;
- (d) receive information about guardianships from the court; and
- (e) be treated with respect and dignity.

(2) Except as otherwise provided by this chapter or any other law, and except for an individual under a court-ordered guardianship with a severe intellectual disability and significant limitations in adaptive behavior to whom Subsections (2)(h), (j), (k), (t), and (u) do not apply, an incapacitated person for whom a guardian is appointed has right to:

- (a) have counsel represent the incapacitated person at any time after the guardian is

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appointed;

(b) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;

(c) receive a copy of all documents filed in court regarding the guardianship;

(d) receive information about guardianships from the court;

(e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;

(f) participate in developing an individualized plan for the incapacitated person's care, including:

(i) managing the incapacitated person's assets and property;

(ii) determining the incapacitated person's residence; and

(iii) determining the services to be received by the incapacitated person;

(g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;

(h) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:

(i) as expressed or demonstrated before a determination of capacity was made; or

(ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;

(i) be granted the greatest degree of freedom possible that is consistent with the reasons for the guardianship;

(j) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in the order of appointment;

(k) engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license;

(l) be treated with respect and dignity;

(m) be treated fairly by the incapacitated person's guardian;

(n) maintain privacy and confidentiality in personal matters, except as needed by the incapacitated person's guardian to conduct necessary affairs for the incapacitated person;

~~(o) receive telephone calls and personal mail and associate with relatives and~~

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acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;

~~(p)~~(o) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;

~~(q)~~(p) have all services provided by a guardian at a reasonable rate of compensation;

~~(r)~~(q) have a court review any request for payment by a guardian to avoid excessive or unnecessary fees or duplicative billing;

~~(s)~~(r) receive prudent financial management of the incapacitated person's property;

~~(t)~~(s) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the exception provided in Subsection 75-5-312(7)(d), receive a copy of an accounting report regarding the incapacitated person's estate that is submitted to the court by the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for the incapacitated person;

~~(u)~~(t) receive and control the incapacitated person's salary;

~~(v)~~(u) maintain a bank account and manage the incapacitated person's personal money; and

~~(w)~~(v) ask the court to:

(i) review the management activity of a guardian if a dispute cannot be resolved regarding the guardian's management;

(ii) continue to review the need for a guardianship or to modify or terminate a guardianship; and

(iii) enter an order restoring the incapacitated person's capacity at the earliest possible time.

(3) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.

(4) Any right described in this section may be:

(a) addressed in a guardianship proceeding; or

(b) enforced through a private cause of action.

Section 3. Section 75-5-312 is amended to read:

**75-5-312. General powers and duties of guardian -- Penalties.**

(1) (a) A guardian of an incapacitated person shall diligently and in good faith carry out

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the specific duties, powers, and rights that the guardian is granted:

- (i) in an order of appointment by a court under Section 75-5-304; and
- (ii) under this section.

(b) A court may, in the order of appointment, place specific limitations on the guardian's power, duties, and rights.

(c) (i) Except as provided in this Subsection (1), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor.

(ii) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (1)(c)(i).

(d) In carrying out duties, powers, and rights that a guardian is granted, the guardian shall encourage the ward, to the extent practicable, to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.

(e) To the extent known, a guardian, in making decisions about the ward, shall consider the expressed desires, preferences, and personal values of the ward.

(2) Except as modified by an order of appointment under Section 75-5-304, a guardian has the following duties and powers:

(a) to the extent that it is consistent with the terms of any order by a court relating to detention or commitment of the ward, a guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within, or outside of, this state, except that the guardian must give consideration to the ward's preference for the ward's place of residence in accordance with Section 75-5-301.5;

(b) if a guardian is entitled to custody of the ward, the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education;

(c) without regard to custodial rights of the ward's person, a guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection;

(d) a guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service, except that

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the guardian must:

(i) give consideration to the ward's current and previously stated desires for health care and medical treatment in accordance with Section 75-5-301.5; and

(ii) respect the ward's right to receive timely, effective, and appropriate health care in accordance with Section 75-5-301.5;

(e) a guardian is required to notify any interested person named in the order of appointment under Subsection 75-5-304(4) of any significant health care or treatment received by the ward;

(f) a guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:

(i) the ward's admission to a hospital for three or more days or to a hospice program;

(ii) the ward's death; or

(iii) the arrangements for the disposition of the ward's remains;

(g) a guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 10 days, based on:

(i) the guardian's own observations; or

(ii) information from the ward's physician or other medical care providers;

(h) a guardian is required to:

(i) unless emergency conditions exist:

(A) file with the court a notice of the guardian's intent to move the ward; and

(B) serve the notice on all interested persons at least 10 days before the day on which the guardian moves the ward; or

(ii) take reasonable steps to:

(A) notify all interested persons of the guardian's intent to move the ward; and

(B) file the notice of the move with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party;

(i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives, or friends;

(j) if no conservator for the estate of the ward has been appointed, a guardian may:

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(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;

(ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and

(iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward, except that:

(A) the guardian may not use funds from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult; and

(B) the guardian shall exercise care to conserve any excess for the ward's needs;

(k) if no conservator for the estate of the ward has been appointed:

(i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a guardian shall send a report with a full accounting to the court on an annual basis; or

(ii) for estates less than \$50,000 excluding the residence owned by the ward, a guardian shall fill out an informal annual report and mail the report to the court;

(l) a guardian shall provide an annual accounting of the status of the ward, including a report of the physical and mental condition of the ward, the ward's estate that has been subject to the guardian's possession, the ward's place of residence and others living in the same household, to the court in the petition or the annual report as required under Subsection (2)(k); and

(m) a guardian shall comply with standards set by the National Guardianship Association for guardians to the extent that the standards are applicable to the guardian.

(3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person required to receive notice in guardianship proceedings as described in Section 75-5-309.

(4) (a) An accounting report under Subsection (2)(k) shall include a statement regarding:

(i) all assets at the beginning and end of the reporting year;

(ii) any income received during the year;

(iii) any disbursements for the support of the ward;

(iv) any investments or trusts that are held for the ward's benefit;

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(v) any expenditures or fees charged to the ward's estate; and

(vi) any other expenses incurred by the ward's estate.

(b) The court may require additional information in an accounting report under Subsection (2)(k).

(c) The Judicial Council shall approve forms for the accounting reports described in Subsection (2)(k).

(d) An annual accounting report under Subsection (2)(k) shall be examined and approved by the court.

(e) If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual accounting report under Subsection (2)(k).

(f) (i) A corporate fiduciary is not required to petition the court, but shall submit the corporate fiduciary's internal report annually to the court.

(ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.

(g) If a fee is paid for an accounting of an estate, a fee may not be charged for an accounting of the status of a ward under Subsection (2)(l).

(h) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection ~~[75-5-301.5(2)(t)]~~ 75-5-301.5(2)(s).

(5) If a conservator has been appointed for a ward:

(a) all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this chapter; and

(b) the guardian shall account to the conservator for funds expended.

(6) (a) Any guardian of a person for whom a conservator has been appointed:

(i) shall control the custody and care of the ward; and

(ii) is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.

(b) The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

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(7) (a) The court may impose a penalty in an amount not to exceed \$5,000 if a guardian:

(i) makes a substantial misstatement on filings of annual reports;

(ii) is guilty of gross impropriety in handling the property of the ward; or

(iii) willfully fails to file the report required by this section after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed.

(b) The court may order restitution of funds misappropriated from the estate of a ward.

(c) A penalty under this Subsection (7) shall be paid by the guardian and may not be paid by the ward or the ward's estate.

(d) The provisions and penalties in Subsection (2)(k) or (l) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.

(8) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the ward after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

### Section 4. Section 75-5-417 is amended to read:

#### **75-5-417. General duty of conservator.**

(1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.

(2) (a) For all estates in excess of \$50,000 excluding the residence owned by the ward, the conservator shall send a report with a full accounting to the court on an annual basis.

(b) For estates less than \$50,000 excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court. { }

(c) A report under Subsection (2)(a) or (b) shall include a statement regarding:

(i) all assets at the beginning and end of the reporting year;

(ii) any income received during the year;

(iii) any disbursements for the support of the ward;

(iv) any investments or trusts that are held for the ward's benefit;

(v) any expenditures or fees charged to the ward's estate; and

(vi) any other expenses incurred by the ward's estate.



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(d) The Judicial Council shall approve the forms for the accounting reports described in Subsections (2)(a) and (b).

(e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and approved by the court.

(3) (a) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court. ~~{ }~~

(b) A report under Subsection (3)(a) shall be examined and approved by the court.

(4) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection ~~[75-5-301.5(2)(t)]~~ 75-5-301.5(2)(s).

(5) (a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:

- (i) makes a substantial misstatement on filings of any required annual reports;
- (ii) is guilty of gross impropriety in handling the property of the ward; or
- (iii) willfully fails to file the report required by this section.

(b) The court may also order restitution of funds misappropriated from the estate of a ward.

(c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.

(6) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

Section ~~{2}5~~. Section **75-5-701** is enacted to read:

### **Part 7. Supported Decision-making Agreements**

#### **75-5-701. Definitions.**

As used in this part:

- (1) "Abuse" means the same as that term is defined in Section 26B-6-201.
- (2) "Coercion" means influencing or attempting to influence a principal using force, threats, or intimidation.
- (3) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- (4) "Exploitation" means the same as that term is defined in Section 26B-6-201.

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(5) "Good faith" means honesty in fact in the conduct or transaction concerned.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.

(7) "Neglect" means the same as that term is defined in Section 26B-6-201.

(8) "Principal" means an individual who:

(a) is 18 years old or older;

(b) has a disability, as that term is defined in Section 26B-6-801;

(c) seeks to enter or has entered into a supported decision-making agreement with at least one supporter; and

(d) has the permission of the individual's guardian or conservator to enter into a supported decision-making agreement, if the supported decision-making agreement includes an area over which a court has granted authority to the guardian or conservator.

(9) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(10) "Supported decision-making" means the process of supporting and accommodating an individual in the decision-making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the individual.

(11) "Supported decision-making agreement" means an agreement between a principal and at least one supporter that meets the requirements of Section 75-5-704.

(12) "Supporter" means an individual:

(a) who is 18 years old or older;

(b) without:

(i) a substantiated allegation of abuse, neglect, or exploitation;

(ii) a protective or restraining order; or

(iii) a conviction for:

(A) harm of another;

(B) theft; or

(C) financial crime; and

(c) who has agreed to provide specified assistance to a principal by entering into a supported decision-making agreement with the principal.

(13) "Undue influence" means the same as that term is defined in Section 26B-6-201.

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Section ~~{3}~~6. Section 75-5-702 is enacted to read:

### **75-5-702. Purposes of part.**

The purposes of this part are to:

(1) provide a principal assistance in:

(a) gathering and assessing information;

(b) understanding options, responsibilities, and consequences of a decision; and

(c) communicating decisions for a principal if the principal wants assistance with communicating decisions;

(2) give a supporter legal status, as specified in a supported decision-making agreement, to be with a principal, to access information on behalf of a principal, and to participate in discussions with others when a principal is making decisions or seeking to obtain information; and

(3) enable a supporter to assist in making and communicating decisions for a principal, but not to substitute as the decision maker for a principal.

Section ~~{4}~~7. Section 75-5-703 is enacted to read:

### **75-5-703. Interpretation of part.**

This part shall be construed and applied in accordance with the following principles:

(1) a principal should be able to:

(a) live in the manner in which the principal wishes; and

(b) make decisions about accepting or refusing support, assistance, or protection, as long as doing so does not cause serious bodily injury, as that term is defined in Section 26B-5-301, to the principal, or harm to others;

(2) a principal should be informed about and, to the best of the principal's abilities, participate in the management of the principal's affairs;

(3) a principal should receive the most effective, yet least restrictive and intrusive, form of support, assistance, or protection when the principal is unable to manage the principal's affairs alone; and

(4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds should be respected in supporting the principal.

Section ~~{5}~~8. Section 75-5-704 is enacted to read:

### **75-5-704. Supported decision-making agreement.**

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(1) Subject to Subsection (7), a principal may enter into a supported decision-making agreement at any time if the principal:

- (a) enters into the agreement voluntarily and without coercion or undue influence; and
- (b) understands the nature and effect of the agreement.

(2) A principal is presumed to understand the nature and effect of a supported decision-making agreement unless the supported decision-making agreement involves an area over which a court has granted authority to a guardian or conservator.

(3) A supported decision-making agreement shall:

- (a) be in writing;
- (b) state the date on which the agreement is effective;
- (c) designate at least one supporter;
- (d) describe:
  - (i) how the principal uses supported decision-making to make decisions;
  - (ii) the rights of the principal;
  - (iii) the responsibilities of each supporter;
  - (iv) the decision-making supports and accommodations the principal chooses to

receive from each supporter; and

(v) the types of decisions, if any, with which a supporter is not authorized to assist the principal;

(e) include the ink or electronic signature of:

- (i) the principal;
- (ii) each supporter;
- (iii) a guardian or conservator, if required under Subsection 75-5-701(4)(d); and
- (iv) (A) two witnesses; or  
(B) a notary public; and

(f) describe how any perceived or actual conflict of interest between a supporter and the principal will be mitigated.

(4) (a) A supported decision-making agreement executed other than in this state is valid in this state if, when the supported decision-making agreement was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the supported decision-making agreement.

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(b) The meaning and effect of a supported decision-making agreement is determined by the law of the jurisdiction indicated in the supported decision-making agreement and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported decision-making agreement was executed.

(5) (a) A supported decision-making agreement may include a release or other document by which the principal authorizes a supporter to access the principal's confidential information, subject to the terms of the supported decision-making agreement described in Subsection (2)(d) and the supporter's duties described in Section 75-5-705.

(b) Before a covered entity may share a principal's protected health information with a supporter, the principal shall sign a HIPAA consent form authorizing release of the protected health information to the supporter.

(c) Nothing in this part shall be construed to alter or preempt the requirements for protecting health information under HIPAA.

(6) Each supporter shall include with the supporter's signature:

(a) a description of the supporter's relationship to the principal;

(b) a statement of the supporter's willingness to act as a supporter;

(c) an acknowledgment of the supporter's duties; and

(d) an attestation that the supporter:

(i) agrees to honor the right of the principal to make decisions;

(ii) will not make decisions for the principal, including health care decisions; and

(iii) will respect and work to further the independence of the principal.

(7) A supported decision-making agreement may do one or more of the following:

(a) specify a time period for which the supported decision-making agreement is valid;

(b) designate more than one supporter;

(c) designate an alternate individual to act in the place of a supporter under circumstances specified in the supported decision-making agreement; or

(d) authorize a supporter to share information with another supporter or other individual named in the supported decision-making agreement.

Section ~~6~~9. Section 75-5-705 is enacted to read:

### **75-5-705. Supporter duties.**

(1) A supporter shall:

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(a) act with the care, competence, and diligence ordinarily exercised by individuals in similar circumstances, and in accordance with the supporter's skills or expertise;

(b) act in good faith;

(c) comply with the terms of the supported decision-making agreement;

(d) maintain records, which the supporter shall make available to the principal upon request, concerning:

(i) the supporter's actions under the supported decision-making agreement; and

(ii) how the principal communicates and expresses opinions to the supporter; and

(e) ensure that all information collected on behalf of the principal pursuant to the supported decision-making agreement and this section is:

(i) kept confidential, as appropriate;

(ii) not subject to unauthorized access, use, or disclosure; and

(iii) properly disposed of when appropriate.

(2) Except as otherwise provided in the supported decision-making agreement or Subsection (3), a supporter may, as directed by the principal:

(a) assist the principal in understanding information, options, responsibilities, and consequences of the principal's life decisions, including decisions relating to the principal's affairs or supportive services;

(b) help the principal access, obtain, and understand information that is relevant to a life decision, including medical, psychological, financial, or educational decisions, or any treatment records or records related to the management of the principal's affairs or supportive services;

(c) assist the principal with finding, obtaining, and making appointments for supportive services, and implement the principal's plans for supportive services;

(d) help the principal monitor information about the principal's affairs or supportive services, including tracking future necessary or recommended services;

(e) ascertain the wishes and decisions of the principal, assist in communicating those wishes and decisions to others, and advocate to ensure that the wishes and decisions of the principal are implemented; or

(f) assist the principal with obtaining information to which the principal is entitled.

(3) A supporter may not:

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(a) coerce, exploit, exert undue influence on, or make decisions on behalf of the principal;

(b) sign for the principal or provide an electronic signature of the principal to a third party;

(c) make health care decisions for the principal; or

(d) without the principal's consent:

(i) obtain information that is not reasonably related to matters with which the supporter is authorized to support or assist the principal pursuant to the supported decision-making agreement;

(ii) use information acquired in connection with the supported decision-making agreement for a purpose other than supporting or assisting the principal pursuant to the supported decision-making agreement; or

(iii) delegate the supporter's duties to a third party.

Section ~~{7}~~10. Section 75-5-706 is enacted to read:

### **75-5-706. Revocation -- Withdrawal.**

(1) A principal may revoke a supported decision-making agreement at any time by providing written notice to all other parties to the agreement.

(2) A supporter may withdraw from a supported decision-making agreement at any time by providing written notice to all other parties to the agreement.

(3) A written notice of revocation or withdrawal under this section may be provided by electronic means.

Section ~~{8}~~11. Section 75-5-707 is enacted to read:

### **75-5-707. Termination.**

Unless otherwise provided in the supported decision-making agreement, a supported decision-making agreement is terminated upon the occurrence of any of the following:

(1) the death of the principal;

(2) revocation by the principal pursuant to Section 75-5-706;

(3) as to a specific supporter, if the supporter is no longer qualified by reason of failure to meet the requirements of Subsection 75-5-701(8)(b);

(4) withdrawal by all of the supporters pursuant to Section 75-5-706 without the designation of a successor supporter;

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(5) the principal's execution of a valid power of attorney, healthcare directive, or declaration for mental health treatment, except to the extent the executed document expressly continues, in whole or in part, the supported decision-making agreement; or

(6) a court's:

(a) determination that the principal does not have capacity to execute or consent to a supported decision-making agreement; or

(b) appointment of a temporary or permanent guardian or conservator, unless the court's order of appointment:

(i) modifies but continues the supported decision-making agreement; and

(ii) limits the powers and duties of the guardian.

Section ~~{9}~~12. Section **75-5-708** is enacted to read:

### **75-5-708. Impact of supported decision-making agreement.**

(1) A decision or request made or communicated by a principal with the assistance of a supporter in accordance with the terms of a supported decision-making agreement and this part shall, for the purposes of any provision of law, be recognized as the decision or request of the principal and may be enforced on the same basis as a decision or request of the principal without support.

(2) The availability of a supported decision-making agreement does not limit the informal use of supported decision making, or preclude judicial consideration of informal supported decision-making arrangements as a less restrictive alternative to a guardianship or conservatorship.

(3) Execution of a supported decision-making agreement may not be a condition of participating in any activity, service, or program.

(4) A court may not consider a principal's execution of a supported decision-making agreement as evidence of the principal's incapacity.

(5) The existence of a supported decision-making agreement does not preclude the principal from acting independently of the supported decision-making agreement.

Section ~~{10}~~13. Section **75-5-709** is enacted to read:

### **75-5-709. Liability.**

(1) A person who is not a party to a supported decision-making agreement, including a provider of health care or financial services, that in good faith accepts or relies upon a



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supported decision-making agreement:

(a) may presume that the signatures on the supported decision-making agreement are genuine, unless the person has actual knowledge that any signature on the supported decision-making agreement is not genuine;

(b) may presume that a supported decision-making agreement is valid and that a purported supporter's authority is valid, unless the person has actual knowledge that the supported decision-making agreement or the purported supporter's authority has been revoked, terminated, or is otherwise void or invalid; and

(c) is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a provision in a supported decision-making agreement, or for following the direction of a supporter given in accordance with the supported decision-making agreement.

(2) If a person has reason to believe a principal is or has been the subject of abuse, neglect, or exploitation, or observes a principal being subjected to conditions or circumstances that would reasonably result in abuse, neglect, or exploitation, the person shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services.

(3) The provisions of this part may not be construed to affect mandatory reporting obligations related to abuse, neglect, or exploitation.

(4) A supporter who violates this part or the terms of a supported decision-making agreement is liable to the principal or the principal's successor in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred.

(5) A transaction between a supporter and a principal that occurs while a supported decision-making agreement is in effect, or while the supporter is in a position of trust with the principal, and from which the supporter obtains a benefit or advantage, is voidable by the principal unless the supporter establishes that the transaction was fair to the principal.

Section ~~{11}~~14. **Effective date.**

This bill takes effect on May 1, 2024.