



## 2017 ASSEMBLY BILL 655

November 14, 2017 - Introduced by Representatives BERNIER, NOVAK, MEYERS, KOLSTE, PETRYK, EDMING, DOYLE, BERCEAU, STEFFEN, FIELDS, ANDERSON, MURSAU, HORLACHER, SUMMERFIELD, THIESFELDT, KRUG, E. BROOKS, CONSIDINE, SUBECK, TITTL, LOUDENBECK, SARGENT, MACCO, FELZKOWSKI, SPIROS, RIPP, CROWLEY, SINICKI, BROSTOFF, KULP, GOYKE, KOOYENGA, BOWEN and SPREITZER, cosponsored by Senators HARSDORF, OLSEN, JOHNSON, MARKLEIN, MILLER, RINGHAND, BEWLEY and HANSEN. Referred to Committee on Family Law.

1     **AN ACT** *to amend* 54.10 (3) (a) 4. and 54.10 (3) (b); and *to create* chapter 53, 54.10  
2           (2) (b) 9m. and 115.807 (4) of the statutes; **relating to:** supported  
3           decision-making agreements.

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### *Analysis by the Legislative Reference Bureau*

This bill allows an adult with a functional impairment to create a supported decision-making agreement to allow another person, referred to as a “supporter,” to assist the adult with certain decision-making by providing assistance with one or more of the following: 1) understanding the options, responsibilities, and consequences of the adult’s life decisions, without making the decision for the adult; 2) accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records; 3) understanding that information once it is obtained; or 4) communicating the adult’s life decisions to the appropriate people. Under the bill, a designated supporter is not a surrogate decision maker for the adult and is not authorized to sign legal documents for the adult or bind the adult to a legal agreement. The supporter has only the authority granted by the adult under the terms of the supported decision-making agreement. Execution of a supported decision-making agreement does not preclude an adult with a functional impairment from acting independently of the agreement, nor may the agreement be used as evidence of incapacity or incompetency.

The bill requires the Department of Health Services to prepare and provide access to a supported decision-making form and information regarding supported



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1           (1) "Abuse" has the meaning given in s. 46.90 (1) (a).

2           (2) "Functional impairment" means any of the following:

3           (a) A physical, developmental, or mental condition that substantially limits one  
4 or more of an individual's major life activities, including any of the following:

5           1. Capacity for independent living.

6           2. Self direction.

7           3. Self care.

8           4. Mobility.

9           5. Communication.

10          6. Learning.

11          (b) Impairment as defined under s. 54.01 (14).

12          (c) Other like incapacities as defined under s. 54.01 (22).

13          (3) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

14          (4) "Health care provider" has the meaning given in s. 155.01 (7).

15          (5) "Neglect" has the meaning given in s. 46.90 (1) (f).

16          (6) "Supported decision-making" means a process of supporting and  
17 accommodating an adult with a functional impairment to enable the adult to make  
18 life decisions, including decisions related to where the adult wants to live, the  
19 services, supports, and medical care the adult wants to receive, whom the adult  
20 wants to live with, and where the adult wants to work, without impeding the  
21 self-determination of the adult.

22          (7) "Supported decision-making agreement" is an agreement between an adult  
23 with a functional impairment and a supporter entered into under this chapter.

24          (8) "Supporter" means an adult who is willing to enter into an agreement with  
25 an adult with a functional impairment to provide supported decision-making.



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1 adult with a functional impairment or bind the adult with a functional impairment  
2 to a legal agreement.

3 **53.12 Authority of supporter.** A supporter may exercise the authority  
4 granted to the supporter in the supported decision-making agreement.

5 **53.14 Term of agreement; revocation. (1)** Except as otherwise provided  
6 in this section, a supported decision-making agreement extends until terminated by  
7 either party or by the terms of the agreement.

8 **(2)** A supported decision-making agreement is terminated if any of the  
9 following are true:

10 (a) County adult protective services substantiated an allegation of neglect or  
11 abuse by the supporter.

12 (b) The supporter is found criminally liable for conduct described under par. (a).

13 (c) There is a restraining order against the supporter as described under s.  
14 813.123.

15 **(3)** An adult with a functional impairment may revoke his or her supported  
16 decision-making agreement and invalidate the supported decision-making  
17 agreement at any time by doing any of the following:

18 (a) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying  
19 the supported decision-making agreement or directing another in the presence of  
20 the adult with a functional impairment to so destroy the supported decision-making  
21 agreement.

22 (b) Executing a statement, in writing, that is signed and dated by the adult with  
23 a functional impairment, expressing his or her intent to revoke the supported  
24 decision-making agreement.

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1 (c) Verbally expressing the intent of the adult with a functional impairment to  
2 revoke the supported decision-making agreement, in the presence of 2 witnesses.

3 (4) Unless the supported decision-making agreement provides a different  
4 method for the supporter's resignation, a supporter may resign by giving notice to  
5 the adult with a functional impairment.

6 **53.16 Access to personal information.** (1) A supporter is only authorized  
7 to assist the adult with a functional impairment in accessing, collecting, or obtaining  
8 information that is relevant to a decision authorized under the supported  
9 decision-making agreement.

10 (2) A supporter may assist with accessing or obtaining any information that  
11 will help the adult with a functional impairment make health care decisions,  
12 including medical, psychological, financial, education, or treatment records or  
13 research under ss. 51.30 and 146.83 and the federal Health Insurance Portability  
14 and Accountability Act of 1996, 45 CFR 164.502. A supporter may only access or  
15 obtain patient health care records, as defined under s. 146.81 (4), if the adult with  
16 a functional impairment has signed a release allowing the supporter to see protected  
17 health information, as defined under s. 146.816 (1) (f).

18 (3) A supporter may assist with accessing or obtaining any information on  
19 education records under the federal Family Educational Rights and Privacy Act of  
20 1974, 20 USC 1232g, if the adult with a functional impairment has signed a release  
21 allowing the supporter to access information under this subsection.

22 (4) The supporter shall ensure the information under this section is kept  
23 privileged and confidential, as applicable, and is not subject to unauthorized access,  
24 use, or disclosure.

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1           (5) Notwithstanding the existence of a supported decision-making agreement,  
2 an adult with a functional impairment continues to have unrestricted access to  
3 personal information without the assistance of a supporter.

4           (6) Notwithstanding the existence of a supported decision-making agreement,  
5 an adult with a functional impairment is able to request and receive assistance on  
6 any decision that is not covered under the supported decision-making agreement at  
7 any time.

8           **53.18 Authorization and witnesses.** (1) An adult with a functional  
9 impairment and his or her supporter entering into a supported decision-making  
10 agreement must sign and date the agreement in the presence of 2 or more subscribing  
11 witnesses or a notary public.

12           (2) If the adult with a functional impairment and his or her supporter choose  
13 to sign and date the supported decision-making agreement before witnesses, the  
14 attesting witnesses must be at least 18 years of age.

15           **53.20 Supported decision-making agreement instrument; form.** (1) A  
16 supported decision-making agreement is valid if it is in writing, entered into  
17 voluntarily as described under s. 53.10, signed and dated as described under s. 53.18,  
18 and in substantially the following form:



If I have not checked either "Yes" or "No" or specifically identified and listed a decision immediately above, my supporter may not help me with that type of decision.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may do any of the following, if I have checked "Yes":

1. Help me access, collect, or obtain information, including records, relevant to a decision. If I have checked "Yes," my supporter may help me access, collect, or obtain the type of information specified, including relevant records, but if I have checked "No," or I have not checked either "Yes" or "No," my supporter may not help me access, collect, or obtain that type of information:

Medical- Yes \_\_\_ No \_\_\_

Psychological- Yes \_\_\_ No \_\_\_

Financial- Yes \_\_\_ No \_\_\_

Education- Yes \_\_\_ No \_\_\_

Treatment- Yes \_\_\_ No \_\_\_

Other- Yes \_\_\_ No \_\_\_ (If "Yes," specify the other type(s) of information with which the supporter may assist \_\_\_\_\_)

2. Help me understand my options so I can make an informed decision. Yes \_\_\_ No \_\_\_
3. Help me communicate my decision to appropriate persons. Yes \_\_\_ No \_\_\_
4. Help me access appropriate personal records, including protected health information under the Health Insurance Portability and Accountability Act, the Family Educational Rights and Privacy Act, and other records that may or may not require a release for specific decisions I want to make. Yes \_\_\_ No \_\_\_

### **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.

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(print) Name of person designating a supporter

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Signature

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Date

## CONSENT OF SUPPORTER

I know \_\_\_\_\_ (name of person) personally or I have received proof of his or her identity and I believe him or her to be at least 18 years of age and entering this agreement knowingly and voluntarily. I am at least 18 years of age.

I, \_\_\_\_\_ (name of supporter), consent to act as a supporter under this agreement.

**Supporter:**

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(print) Name

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Address

City

State

Zip

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E-mail address

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Phone number(s)

Cell Phone

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Signature

Date

**STATEMENT AND SIGNATURE  
OF WITNESSES OR  
SIGNATURE OF NOTARY**

(This agreement must be signed either by 2 witnesses who are at least 18 years of age or by a notary public.)

**OPTION I: WITNESSES**

I know \_\_\_\_\_ (name of person) personally or I have received proof of his or her identity and I believe him or her to be at least 18 years of age and entering this agreement knowingly and voluntarily. I am at least 18 years of age.

**Witness No. 1:**

\_\_\_\_\_  
(print) Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone number(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Witness No. 2:**

\_\_\_\_\_  
(print) Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone number(s)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**OPTION II: NOTARY PUBLIC**

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date), by  
\_\_\_\_\_ (name of adult with a functional impairment) and  
\_\_\_\_\_ (name of supporter).

Signature of notary \_\_\_\_\_

(Seal, if any, of notary)

Printed name \_\_\_\_\_

My commission expires \_\_\_\_\_