

HOUSE BILL No. 2034

By Committee on Federal and State Affairs

1-16

1 AN ACT enacting the supported decision-making agreements act; relating
2 to decision-making assistance for adults.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 9, and amendments thereto, shall be
6 known and may be cited as the supported decision-making agreements act.

7 Sec. 2. As used in the supported decision-making agreements act,
8 unless the context indicates otherwise:

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

10 (b) "Affairs" means decisions related to the following affairs of a
11 principal:

12 (1) Monitoring health, obtaining, scheduling, implementing and
13 coordinating health and support services, understanding health care
14 information and options, providing for care and comfort, and other health
15 care and personal matters in which the principal makes decisions about the
16 principal's health care;

17 (2) managing income and assets and the use of income and assets for
18 clothing, support, care, comfort, education, shelter and payment of other
19 liabilities of the principal;

20 (3) handling personal, health care and financial matters that arise in
21 the course of daily living;

22 (4) monitoring information about the principal's support services,
23 including necessary or recommended future support services;

24 (5) living arrangements, including where and with whom the
25 principal wants to live; and

26 (6) working arrangements, including where the principal wants to
27 work.

28 (c) "Capacity" means the ability to understand and appreciate the
29 nature and consequences of a decision and the ability to reach and
30 communicate an informed decision.

31 (d) "Conservator" means a person appointed a conservator under the
32 act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et
33 seq., and amendments thereto, or a similar law of another state.

34 (e) "Decision" means a decision relating to the affairs of a principal.

35 (f) "Decision-making assistance" means the decision-making
36 assistance described in section 7, and amendments thereto.

1 (g) "Guardian" means a person appointed a guardian under the act for
2 obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and
3 amendments thereto, or a similar law of another state.

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

6 (i) "Person" means an individual, healthcare institution, healthcare
7 provider, corporation, partnership, limited liability company, association,
8 joint venture, government, governmental subdivision, governmental
9 agency, governmental instrumentality, public corporation, or another legal
10 or commercial entity.

11 (j) "Principal" means an adult who enters into a supported decision-
12 making agreement under the supported decision-making agreements act to
13 receive decision-making assistance.

14 (k) "Support services" means the following services:

15 (1) House repair, home cleaning, laundry, shopping and providing
16 meals;

17 (2) transportation, accompanying a principal, and facilitating a
18 principal's written, oral and electronic communication;

19 (3) nurse visitations and attendant care;

20 (4) provision of healthcare;

21 (5) physical and psychosocial assessments;

22 (6) financial assessments and advice on banking, taxes, loans,
23 investments and management of real property;

24 (7) legal assessments and advice;

25 (8) education and educational assessments and advice;

26 (9) assistance with bathing, dressing, eating, range of motion,
27 toileting, transferring, ambulation and other direct assistance with the
28 activities of daily living;

29 (10) care planning; and

30 (11) services that assist in maintaining the independence of a
31 principal.

32 (l) "Supported decision-making agreement" means an agreement
33 authorized under section 3, and amendments thereto.

34 (m) "Supporter" means an adult who enters into a supported decision-
35 making agreement under the supported decision-making agreements act
36 and provides decision-making assistance.

37 Sec. 3. (a) Except as provided in subsections (b) and (c), an adult may
38 enter into a supported decision-making agreement. A supported decision-
39 making agreement allows an adult to receive decision-making assistance
40 with the adult's affairs from one or more other adults.

41 (b) The adult wanting to receive decision-making assistance shall not
42 enter into a supported decision-making agreement unless the adult:

43 (1) Enters into the agreement voluntarily and without coercion or

1 undue influence; and

2 (2) understands the nature and effect of the agreement.

3 (c) An adult shall not enter into a supported decision-making
4 agreement if the agreement encroaches on the authority of a guardian or
5 conservator of the adult, unless the guardian or conservator approves in
6 writing the adult entering into the supported decision-making agreement.

7 (d) A supporter shall be an adult, but shall not be:

8 (1) An employer or employee of the principal, unless the employer or
9 employee is an immediate family member of the principal;

10 (2) a person who provides paid support services, except decision-
11 making assistance, directly to the principal, unless the person is an
12 immediate family member of the principal; or

13 (3) a person against whom a protective order or restraining order has
14 been entered by a court on request of or on behalf of the principal.

15 Sec. 4. (a) A supported decision-making agreement shall:

16 (1) Name one or more adults to provide a principal with decision-
17 making assistance;

18 (2) describe the decision-making assistance that each supporter may
19 provide the principal; and

20 (3) contain a notice to third parties that summarizes the rights and
21 obligations of the supporter under the supported decision-making
22 agreements act and expressly identifies sections 1 through 9, and
23 amendments thereto.

24 (b) A supported decision-making agreement may:

25 (1) Name an alternate supporter to act in the place of a supporter and
26 the circumstances under which the alternate supporter may act;

27 (2) authorize a supporter to share information with another supporter
28 named in the agreement, including an alternate supporter.

29 (c) A supported decision-making agreement shall contain a separate
30 declaration by each supporter, including an alternate supporter, that states
31 the supporter's relationship with the principal, states the willingness of the
32 supporter to act as a supporter for the principal and indicates that the
33 supporter acknowledges the duties of a supporter under the supported
34 decision-making agreements act. Each declaration shall be signed by the
35 supporter making the declaration.

36 Sec. 5. (a) A supported decision-making agreement shall be valid if:

37 (1) The agreement is dated and in writing;

38 (2) the agreement satisfies the requirements of sections 3 and 4, and
39 amendments thereto;

40 (3) the agreement has been signed by the principal and each named
41 supporter, including any alternate supporter, and the:

42 (A) Signing takes place in the presence of two witnesses who also
43 sign the agreement; or

1 (B) signatures of the principal and each named supporter, including
2 any alternate supporter, are notarized; and

3 (4) when the principal has a guardian or conservator, the principal has
4 notified the guardian or conservator of the agreement.

5 (b) (1) Each witness under subsection (a) shall be an adult who
6 understands the means of communication used by the principal, except, if
7 there is an individual who understands the principal's means of
8 communication present to assist during the execution of the supported
9 decision-making agreement, the witnesses are not required to understand
10 the means of communication used by the principal.

11 (2) A witness under subsection (a) shall not be a supporter named in
12 the supported decision-making agreement or an employee or agent of a
13 supporter named in the supported decision-making agreement.

14 (c) A supported decision-making agreement shall be substantially in
15 compliance with the form set forth by the judicial council. The judicial
16 council shall develop a form for use under the supported decision-making
17 agreements act.

18 Sec. 6. (a) A supported decision-making agreement may indicate the
19 date it becomes effective and its duration. If the agreement does not
20 indicate the date it becomes effective, the agreement becomes effective
21 immediately. If the agreement does not indicate its duration, the agreement
22 remains effective until terminated under this section.

23 (b) A principal may, at any time, terminate all or a portion of a
24 supported decision-making agreement. A supporter may, at any time,
25 terminate all or a portion of the supporter's obligations under a supported
26 decision-making agreement, including the declaration of support described
27 in section 4, and amendments thereto.

28 (c) A termination under this section shall be dated and in writing. The
29 termination shall be signed and the:

30 (1) Signing shall take place in the presence of two witnesses who also
31 sign the termination; or

32 (2) signature shall be notarized.

33 (d) A principal or supporter terminating all or a portion of a supported
34 decision-making agreement shall notify the other party to the agreement
35 that the agreement has been terminated. Notice shall be given in person, by
36 certified mail or by electronic means.

37 (e) If a portion of a supported decision-making agreement is
38 terminated under this section and the termination is consistent with this
39 section, the remainder of the agreement remains in effect.

40 Sec. 7. (a) A supporter shall act with the care, competence and
41 diligence ordinarily exercised by individuals in similar circumstances.

42 (b) Except as limited by a supported decision-making agreement, a
43 supporter may provide to a principal the following decision-making

1 assistance about the principal's affairs:

2 (1) Assisting with making decisions, communicating decisions, and
3 understanding information about, options for, the responsibilities of, and
4 the consequences of decisions;

5 (2) accessing, obtaining, and understanding information that is
6 relevant to decisions necessary for the principal to manage the principal's
7 affairs, including medical, psychological, financial and educational
8 information, medical treatment records and other records;

9 (3) ascertaining the wishes and decisions of the principal, assisting in
10 communicating those wishes and decisions to other persons, and
11 advocating to ensure the implementation of the principal's wishes and
12 decisions; and

13 (4) accompanying the principal and participating in discussions with
14 other persons when the principal is making decisions or attempting to
15 obtain information for decisions.

16 (c) Under subsection (b), a supporter may use the principal's dated
17 consent to assist the principal in obtaining protected health information
18 under the health insurance portability and accountability act of 1996
19 (public law 104-191) or educational records under the family educational
20 rights and privacy act of 1974, 20 U.S.C. § 1232g.

21 (d) A supporter shall not:

22 (1) Exert undue influence on the principal;

23 (2) make decisions for or on behalf of the principal;

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

26 (4) obtain, without the consent of the principal, information that is not
27 reasonably related to matters with which the supporter may assist the
28 principal under the supported decision-making agreement; or

29 (5) use, without the consent of the principal, information acquired for
30 a purpose authorized by the supported decision-making agreement for a
31 purpose other than assisting the principal to make a decision under the
32 supported decision-making agreement.

33 (e) A supporter who collects information on behalf of the principal
34 under the supported decision-making agreement shall:

35 (1) Keep the information confidential;

36 (2) not use the information for a use that is not authorized by the
37 principal;

38 (3) protect the information from unauthorized access, use or
39 disclosure; and

40 (4) dispose of the information properly when appropriate.

41 Sec. 8. (a) A person shall recognize a decision or request made or
42 communicated with the decision-making assistance of a supporter under
43 the supported decision-making agreements act as the decision or request of

1 the principal for the purposes of a provision of law, and the principal or
2 supporter may enforce the decision or request in law or equity on the same
3 basis as a decision or request of the principal.

4 (b) A person who, in good faith, either acts in reliance on an
5 authorization in a supported decision-making agreement or declines to
6 honor an authorization in a supported decision-making agreement is not
7 subject to civil or criminal liability or to discipline for unprofessional
8 conduct for:

9 (1) Complying with an authorization in a supported decision-making
10 agreement, if the person is complying based on an assumption that the
11 underlying supported decision-making agreement was valid when made
12 and has not been terminated;

13 (2) declining to comply with an authorization in a supported decision-
14 making agreement if the person is declining based on actual knowledge
15 that the supported decision-making agreement is invalid or has been
16 terminated; or

17 (3) declining to comply with an authorization related to healthcare in
18 a supported decision-making agreement, if the person is declining because
19 the action proposed to be taken under the supported decision-making
20 agreement is contrary to the good faith medical judgment of the person or
21 to a written policy of a healthcare institution that is based on reasons of
22 conscience.

23 (c) As used in this section, "good faith" means honesty in fact and the
24 observance of reasonable standards of fair dealing.

25 Sec. 9. (a) An adult who enters into a supported decision-making
26 agreement may act without the decision-making assistance of the
27 supporter.

28 (b) A person shall not use the execution of a supported decision-
29 making agreement as evidence that the principal does not have capacity.

30 (c) In the application of the supported decision-making agreements
31 act:

32 (1) A decision that a principal is incapable of managing the principal's
33 affairs may not be based on the manner in which the principal
34 communicates with others; and

35 (2) a principal is considered to have capacity even if the capacity is
36 achieved by the principal receiving decision-making assistance.

37 Sec. 10. This act shall take effect and be in force from and after its
38 publication in the statute book.