

1 A bill to be entitled
2 An act relating to supported decisionmaking; amending
3 s. 393.12, F.S.; requiring that petitions submitted in
4 support of appointment of a guardian advocate state
5 the petitioner's efforts to use alternatives to
6 guardianship before seeking such appointment;
7 requiring courts to determine whether a person with a
8 developmental disability has executed a supported
9 decisionmaking agreement in proceedings in which a
10 guardian advocate is appointed; requiring courts to
11 specify in orders any portion of an agreement that is
12 suspended by the court; prohibiting such suspensions
13 unless the court makes certain determinations;
14 amending s. 744.102, F.S.; defining the term
15 "alternative to guardianship"; amending s. 744.3201,
16 F.S.; requiring that petitions submitted in support of
17 a determination of incapacity state the petitioner's
18 efforts to use alternatives to guardianship before
19 seeking such a determination; amending s. 744.334,
20 F.S.; deleting the definition of the term
21 "alternatives to guardianship"; amending s. 744.3675,
22 F.S.; revising requirements for annual guardianship
23 plans; creating ch. 746, F.S., entitled "Supported
24 Decisionmaking"; providing a directive to the Division
25 of Law Revision; creating s. 746.101, F.S.; providing

26 | a short title; creating s. 746.102, F.S.; providing
27 | legislative findings; creating s. 746.103, F.S.;
28 | defining terms; creating s. 746.104, F.S.; prohibiting
29 | adults from entering into supported decisionmaking
30 | agreements unless specified conditions are met;
31 | providing a presumption of capacity for adults;
32 | specifying that the manner in which an adult with a
33 | disability communicates with others is not grounds for
34 | deciding that the adult is incapable of managing his
35 | or her affairs; prohibiting an adult's execution of a
36 | supported decisionmaking agreement from being used as
37 | evidence of his or her incapacity; specifying that the
38 | execution of such agreements does not preclude the
39 | ability of decisionmakers to act independently of the
40 | agreement or of their supporters; specifying that
41 | decisionmakers are considered to have capacity even if
42 | capacity is achieved by receiving decisionmaking
43 | assistance; authorizing a decisionmaker to make,
44 | change, and revoke supported decisionmaking agreements
45 | even if he or she does not have the capacity to
46 | independently manage his or her health care, legal
47 | matters, and financial affairs; creating s. 746.105,
48 | F.S.; authorizing adults with disabilities to enter
49 | into supported decisionmaking agreements with
50 | supporters; requiring and authorizing supporters to

51 perform specified actions under such agreements;
52 authorizing adults with disabilities who are under
53 guardianship or guardian advocacy to enter into
54 supported decisionmaking agreements under certain
55 conditions; providing that supported decisionmaking
56 agreements may refer to or be used in conjunction with
57 other legal documents; authorizing decisionmakers to
58 designate a supporter to act as a preneed guardian;
59 creating s. 746.106, F.S.; providing requirements for
60 execution of a supported decisionmaking agreement;
61 creating s. 746.107, F.S.; providing for the duration
62 and termination of supported decisionmaking
63 agreements; creating s. 746.108, F.S.; authorizing
64 supporters to assist decisionmakers with obtaining
65 certain information; requiring decisionmakers to
66 provide specific consent before a supporter provides
67 such assistance; providing duties for supporters
68 relating to such information; creating s. 746.109,
69 F.S.; specifying elements of supported decisionmaking
70 agreements; specifying provisions that may be included
71 in such agreements; creating s. 746.1011, F.S.;
72 providing a suggested form for supported
73 decisionmaking agreements; creating s. 746.1012, F.S.;
74 requiring that decisions and requests communicated
75 with the assistance of a supporter be recognized as

76 decisions and requests of the decisionmaker; creating
77 s. 746.1013, F.S.; providing that persons who are
78 provided with supported decisionmaking agreements may
79 rely on such agreements; providing that a person is
80 not subject to criminal or civil liability and has not
81 engaged in professional misconduct for certain acts
82 and omissions under specified conditions; providing
83 immunity from certain actions to certain health care
84 providers and public and private entities, custodians,
85 and organizations, under certain conditions; requiring
86 educational agencies and institutions to allow
87 supporters to participate in certain school functions
88 and meetings and have access to educational records
89 under certain conditions; providing construction;
90 creating s. 746.1014, F.S.; requiring public schools
91 to provide information about supported decisionmaking
92 agreements under certain conditions; requiring public
93 schools to ensure that certain informational materials
94 include information relating to supported
95 decisionmaking; requiring public schools to provide
96 information and training to specified staff members;
97 amending s. 744.2003, F.S.; conforming a cross-
98 reference; providing an effective date.

99
100 Be It Enacted by the Legislature of the State of Florida:

101
102 Section 1. Subsections (3) and (7) of section 393.12,
103 Florida Statutes, are amended to read:

104 393.12 Capacity; appointment of guardian advocate.—

105 (3) PETITION.—A petition to appoint a guardian advocate
106 for a person with a developmental disability may be executed by
107 an adult person who is a resident of this state. The petition
108 must be verified and must do all of the following:

109 (a) State the name, age, and present address of the
110 petitioner and his or her relationship to the person with a
111 developmental disability.~~†~~

112 (b) State the name, age, county of residence, and present
113 address of the person with a developmental disability.~~†~~

114 (c) Allege that the petitioner believes that the person
115 needs a guardian advocate and specify the factual information on
116 which such belief is based.~~†~~

117 (d) State the petitioner's efforts to use alternatives to
118 guardianship, as defined in s. 744.102(1), before seeking the
119 appointment of a guardian advocate, including all of the
120 following:

121 1. Alternatives to guardianship which were considered and
122 implemented.

123 2. If alternatives to guardianship were not considered or
124 implemented, the reason why the alternatives to guardianship
125 were not considered or implemented.

126 3. The reason or reasons why the alternatives to
 127 guardianship are insufficient to meet the needs of the person
 128 with a developmental disability and to allow that person to
 129 exercise his or her own rights.

130 (e) Specify the exact areas in which the person lacks the
 131 decisionmaking ability to make informed decisions about his or
 132 her care and treatment services or to meet the essential
 133 requirements for his or her physical health or safety.†

134 (f)~~(e)~~ Specify the legal disabilities to which the person
 135 is subject.†~~and~~

136 (g)~~(f)~~ State the name of the proposed guardian advocate
 137 and~~†~~ the relationship of that person to the person with a
 138 developmental disability; the relationship that the proposed
 139 guardian advocate had or has with a provider of health care
 140 services, residential services, or other services to the person
 141 with a developmental disability; and the reason why this person
 142 should be appointed. If a willing and qualified guardian
 143 advocate cannot be located, the petition shall so state.

144 (7) ADVANCE DIRECTIVES FOR HEALTH CARE, AND DURABLE POWER
 145 OF ATTORNEY, AND SUPPORTED DECISIONMAKING AGREEMENTS.—In each
 146 proceeding in which a guardian advocate is appointed under this
 147 section, the court shall determine whether the person with a
 148 developmental disability has executed any valid advance
 149 directive under chapter 765, ~~or~~ a durable power of attorney
 150 under chapter 709, or a supported decisionmaking agreement under

151 chapter 746.

152 (a) If the person with a developmental disability has
 153 executed an advance directive, a ~~or~~ durable power of attorney,
 154 or a supported decisionmaking agreement, the court must consider
 155 and find whether the documents will sufficiently address the
 156 needs of the person with a developmental disability for whom the
 157 guardian advocate is sought. A guardian advocate may not be
 158 appointed if the court finds that the advance directive, ~~or~~
 159 durable power of attorney, or supported decisionmaking agreement
 160 provides an alternative to the appointment of a guardian
 161 advocate which will sufficiently address the needs of the person
 162 with a developmental disability.

163 (b) If an interested person seeks to contest an advance
 164 directive, a ~~or~~ durable power of attorney, or a supported
 165 decisionmaking agreement executed by a person with a
 166 developmental disability, the interested person shall file a
 167 verified statement. The verified statement shall include the
 168 factual basis for the belief that the advance directive, ~~or~~
 169 durable power of attorney, or supported decisionmaking agreement
 170 is invalid or does not sufficiently address the needs of the
 171 person for whom a guardian advocate is sought or that the person
 172 with authority under the advance directive, ~~or~~ durable power of
 173 attorney, or supported decisionmaking agreement is abusing his
 174 or her power.

175 (c) If an advance directive exists, the court must ~~shall~~

176 specify in its order and letters of guardian advocacy what
177 authority, if any, the guardian advocate shall exercise over the
178 person's health care surrogate. Pursuant to the grounds listed
179 in s. 765.105, the court, upon its own motion, may, with notice
180 to the health care surrogate and any other appropriate parties,
181 modify or revoke the authority of the health care surrogate to
182 make health care decisions for the person with a developmental
183 disability. For purposes of this section, the term "health care
184 decision" has the same meaning as in s. 765.101.

185 (d) If a ~~any~~ durable power of attorney exists, the court
186 must ~~shall~~ specify in its order and letters of guardian advocacy
187 what powers of the agent, if any, are suspended and granted to
188 the guardian advocate. The court, however, may not suspend any
189 powers of the agent unless the court determines the durable
190 power of attorney is invalid or there is an abuse by the agent
191 of the powers granted.

192 (e) If a supported decisionmaking agreement exists, the
193 court must specify in its order and letters of guardian advocacy
194 any part of the supposed decisionmaking agreement which is
195 suspended; however, the court may not suspend any part of the
196 supported decisionmaking agreement unless it determines that the
197 supported decisionmaking agreement is invalid or there is an
198 abuse of power by any of the supporters.

199 Section 2. Subsections (1) through (22) of section
200 744.102, Florida Statutes, are renumbered as subsections (2)

201 through (23), respectively, and a new subsection (1) is added to
 202 that section to read:

203 744.102 Definitions.—As used in this chapter, the term:

204 (1) "Alternative to guardianship" means an approach to
 205 meeting a person's needs which preserves more of his or her
 206 rights than would the appointment of a guardian. Alternatives to
 207 guardianship include, but are not limited to, an advance
 208 directive as defined in s. 765.101, a durable power of attorney
 209 as provided in chapter 709, a representative payee under 42
 210 U.S.C. s. 1007, a trust instrument as defined in s. 736.0103,
 211 the designation of a health care surrogate as provided in
 212 chapter 765, or a supported decisionmaking agreement as provided
 213 in chapter 746.

214 Section 3. Subsection (2) of section 744.3201, Florida
 215 Statutes, is amended to read:

216 744.3201 Petition to determine incapacity.—

217 (2) The petition must be verified and include all of the
 218 following ~~must~~:

219 (a) State the name, age, and present address of the
 220 petitioner and his or her relationship to the alleged
 221 incapacitated person.†

222 (b) State the name, age, county of residence, and present
 223 address of the alleged incapacitated person.†

224 (c) Specify the primary language spoken by the alleged
 225 incapacitated person, if known.†

226 (d) Allege that the petitioner believes the alleged
227 incapacitated person to be incapacitated and specify the factual
228 information on which such belief is based and the names and
229 addresses of all persons known to the petitioner who have
230 knowledge of such facts through personal observations.~~†~~

231 (e) State the name and address of the alleged
232 incapacitated person's attending or family physician, if known.~~†~~

233 (f) State which rights enumerated in s. 744.3215 the
234 alleged incapacitated person is incapable of exercising, to the
235 best of petitioner's knowledge. If the petitioner has
236 insufficient experience to make such judgments, the petition
237 must so state.~~†~~~~and~~

238 (g) State the names, relationships, and addresses of the
239 next of kin of the alleged incapacitated person, so far as are
240 known, specifying the dates of birth of any who are minors.

241 (h) State the petitioner's efforts to use alternatives to
242 guardianship before seeking a determination of incapacity,
243 including all of the following:

244 1. Alternatives to guardianship which were considered and
245 implemented.

246 2. If alternatives to guardianship were not considered or
247 implemented, the reason why the alternatives to guardianship
248 were not considered or implemented.

249 3. The reason or reasons why the alternatives to
250 guardianship are insufficient to meet the needs of the alleged

251 incapacitated person and to allow that person to exercise his or
252 her own rights.

253 Section 4. Subsection (1) of section 744.334, Florida
254 Statutes, is amended to read:

255 744.334 Petition for appointment of guardian or
256 professional guardian; contents.—

257 (1) Every petition for the appointment of a guardian shall
258 be verified by the petitioner and shall contain statements, to
259 the best of petitioner's knowledge and belief, showing the name,
260 age, residence, and post office address of the alleged
261 incapacitated person or minor; the nature of her or his
262 incapacity, if any; the extent of guardianship desired, either
263 plenary or limited; the residence and post office address of the
264 petitioner; the names and addresses of the next of kin of the
265 alleged incapacitated person or minor, if known to the
266 petitioner; the name of the proposed guardian and the reasons
267 why she or he should be appointed guardian; whether the proposed
268 guardian is a professional guardian; the relationship and
269 previous relationship of the proposed guardian to the alleged
270 incapacitated person or minor; any other type of guardianship
271 under part III of this chapter or alternatives to guardianship,
272 as defined in s. 744.102(1), that the alleged incapacitated
273 person or minor has designated or is in currently or has been in
274 previously; the reasons why a guardian advocate under s.
275 744.3085 or other alternatives to guardianship are insufficient

276 to meet the needs of the alleged incapacitated person or minor;
 277 and the nature and value of property subject to the
 278 guardianship. The petition must state whether a willing and
 279 qualified guardian cannot be located. ~~As used in this~~
 280 ~~subsection, the term "alternatives to guardianship" means an~~
 281 ~~advance directive as defined in s. 765.101, a durable power of~~
 282 ~~attorney as provided in chapter 709, a representative payee~~
 283 ~~under 42 U.S.C. s. 1007, or a trust instrument as defined in s.~~
 284 ~~736.0103.~~

285 Section 5. Subsection (3) of section 744.3675, Florida
 286 Statutes, is amended to read:

287 744.3675 Annual guardianship plan.—Each guardian of the
 288 person must file with the court an annual guardianship plan
 289 which updates information about the condition of the ward. The
 290 annual plan must specify the current needs of the ward and how
 291 those needs are proposed to be met in the coming year.

292 (3) Each plan for an adult ward must address the issue of
 293 restoration of rights to the ward and include:

294 (a) A summary of activities during the preceding year that
 295 were designed to enhance the capacity of the ward, including
 296 whether supported decisionmaking as provided in chapter 746 was
 297 implemented. If supported decisionmaking was not implemented,
 298 the plan must have a statement explaining the reason or reasons
 299 why supported decisionmaking was not implemented.

300 (b) A statement of whether the ward can have any rights

301 restored.

302 (c) A statement of whether restoration of any rights will
303 be sought.

304 Section 6. The Division of Law Revision is directed to
305 create chapter 746, Florida Statutes, consisting of ss. 746.101-
306 746.1014, to be entitled "Supported Decisionmaking."

307 Section 7. Section 746.101, Florida Statutes, is created
308 to read:

309 746.101 Short title.—This chapter may be cited as the
310 "Florida Supported Decisionmaking Act."

311 Section 8. Section 746.102, Florida Statutes, is created
312 to read:

313 746.102 Legislative findings.—The Legislature finds that:

314 (1) All adults, with or without disabilities, should be
315 able to choose to live in the manner they wish.

316 (2) All adults, with or without disabilities, should have
317 the ability to be informed about and participate in the
318 management of their affairs.

319 (3) Adjudicating a person totally incapacitated and in
320 need of a guardian deprives the person of all of his or her
321 civil and legal rights, and that this deprivation may be
322 unnecessary.

323 (4) Supported decisionmaking is recognized as a less
324 restrictive alternative to guardianship and guardian advocacy.

325 Section 9. Section 746.103, Florida Statutes, is created

326 to read:

327 746.103 Definitions.—For purposes of this chapter, the
328 term:

329 (1) "Adult" means a person 18 years of age or older, or a
330 person younger than 18 years of age whose disability of minority
331 has been removed by marriage or otherwise.

332 (2) "Decisionmaker" means an adult with a disability who
333 has entered into a supported decisionmaking agreement with a
334 supporter.

335 (3) "Disability" means, with respect to a person, a
336 physical or mental impairment that substantially limits one or
337 more major life activities, or a record of such an impairment.

338 (4) "Supported decisionmaking" means a process of
339 supporting and accommodating an adult with a disability in order
340 to assist him or her in understanding the options,
341 responsibilities, and consequences of life decisions and
342 enabling the adult to make life decisions, including decisions
343 related to where he or she wants to live; the services,
344 supports, and medical care he or she wants to receive; and where
345 he or she wants to work, without impeding the self-determination
346 of the adult.

347 (5) "Supported decisionmaking agreement" means an
348 agreement between a decisionmaker and one or more supporters
349 entered into under this chapter.

350 (6) "Supporter" means an adult who has entered into a

351 supported decisionmaking agreement with a decisionmaker to
352 support the decisionmaker.

353 Section 10. Section 746.104, Florida Statutes, is created
354 to read:

355 746.104 Capacity.—

356 (1) An adult may not enter into a supported decisionmaking
357 agreement unless the adult does both of the following:

358 (a) Enters into the agreement voluntarily and without
359 coercion or undue influence.

360 (b) Understands the nature and effect of the agreement.

361 (2) An adult, with or without a disability, is presumed to
362 be capable of managing his or her affairs and to have capacity
363 unless otherwise determined by a court in accordance with ss.
364 744.3201-744.331.

365 (3) The manner in which an adult with a disability
366 communicates with others is not grounds for deciding that the
367 adult is incapable of managing his or her affairs.

368 (4) Execution of a supported decisionmaking agreement may
369 not be used as evidence of incapacity and does not preclude the
370 ability of the decisionmaker to act independently of the
371 agreement and of his or her supporters.

372 (5) For purposes of this chapter, a decisionmaker is
373 considered to have capacity even if the capacity is achieved by
374 receiving decisionmaking assistance.

375 (6) A decisionmaker may make, change, or revoke a

376 supported decisionmaking agreement even if the decisionmaker
377 does not have the capacity to independently manage the
378 decisionmaker's health care, legal matters, or financial
379 affairs.

380 Section 11. Section 746.105, Florida Statutes, is created
381 to read:

382 746.105 Supported decisionmaking agreements.—

383 (1) An adult with a disability may voluntarily, without
384 undue influence or coercion, enter into a supported
385 decisionmaking agreement with a supporter under which the
386 decisionmaker authorizes the supporter to do any of the
387 following:

388 (a) Provide supported decisionmaking, including assistance
389 in understanding the options, responsibilities, and consequences
390 of the decisionmaker's life decisions, without making those
391 decisions on behalf of the decisionmaker.

392 (b) Assist the decisionmaker in accessing, collecting, and
393 obtaining information that is relevant to a given life decision,
394 including medical, psychological, financial, educational, or
395 treatment records, from any person or entity, in accordance with
396 s. 746.108.

397 (c) Assist the decisionmaker in understanding the
398 information described in paragraph (b).

399 (d) Assist the decisionmaker in communicating his or her
400 decisions to appropriate persons.

401 (2) A supporter shall exercise only the authority
402 expressly granted to the supporter in the supported
403 decisionmaking agreement.

404 (3) A supporter may access the decisionmaker's personal
405 information only to the extent authorized in the supported
406 decisionmaking agreement.

407 (4) A supporter shall act with the care, competence, and
408 diligence ordinarily exercised by individuals in similar
409 circumstances, with due regard either to the possession of, or
410 lack of, special skills or expertise. A supporter is not a
411 fiduciary of the decisionmaker, unless the supporter has been
412 appointed as such in another legal document, including, but not
413 limited to, a power of attorney.

414 (5) An adult with a disability who is under guardianship
415 or guardian advocacy may enter into a supported decisionmaking
416 agreement if his or her guardian or guardian advocate grants
417 approval in writing of the supported decisionmaking agreement.
418 The adult with a disability does not need approval from the
419 guardian or guardian advocate if the supported decisionmaking
420 agreement will only affect rights that were not removed by the
421 court.

422 (6) Supported decisionmaking agreements may refer to and
423 be used in conjunction with other legal documents, including,
424 but not limited to, any of the following:

425 (a) A designation of a health care surrogate as provided

426 in chapter 765.

427 (b) A durable power of attorney as provided in chapter
 428 709.

429 (c) A trust instrument as defined in s. 736.0103.

430 (d) An advance directive as defined in s. 765.101.

431 (7) A decisionmaker may designate a supporter to act as a
 432 preneed guardian as defined in s. 744.102.

433 Section 12. Section 746.106, Florida Statutes, is created
 434 to read:

435 746.106 Execution of supported decisionmaking agreements.—

436 (1) A supported decisionmaking agreement must be signed
 437 voluntarily, without coercion or undue influence, by the
 438 decisionmaker and the supporter.

439 (2) The decisionmaker and the supporter must sign the
 440 supported decisionmaking agreement in the presence of two
 441 subscribing adult witnesses or must sign the agreement before a
 442 notary public.

443 (3) A decisionmaker or a supporter who is unable to
 444 physically sign the supported decisionmaking agreement may, in
 445 the presence of two subscribing adult witnesses, direct another
 446 person to sign the decisionmaker's or supporter's name. If the
 447 supported decisionmaking agreement is acknowledged before a
 448 notary public, the notary public may sign the decisionmaker's or
 449 supporter's name pursuant to s. 117.05(14).

450 (4) The decisionmaker and the supporter may not act as a

451 subscribing adult witness to the execution of the supported
452 decisionmaking agreement. At least one person who acts as a
453 subscribing adult witness must be a person other than the
454 decisionmaker's spouse or a blood relative.

455 Section 13. Section 746.107, Florida Statutes, is created
456 to read:

457 746.107 Duration; termination.—

458 (1) A supported decisionmaking agreement remains in effect
459 until terminated by either party, by the terms of the agreement,
460 or by a court order.

461 (2) A supported decisionmaking agreement may be terminated
462 by the decisionmaker by giving notice to the supporter orally,
463 in writing, through an assistive technology device, or by any
464 other act showing a specific intent to terminate the agreement.

465 (3) A supported decisionmaking agreement may be terminated
466 by a supporter by providing written notice of the supporter's
467 resignation to the decisionmaker and all other supporters
468 appointed in the agreement. If the decisionmaker cannot
469 understand a written notice, notice must also be provided in the
470 decisionmaker's preferred method of communication. If a
471 supported decisionmaking agreement includes more than one
472 supporter, a supporter can terminate the agreement only as to
473 that supporter.

474 (4) A supported decisionmaking agreement may be terminated
475 by any additional method specified in the agreement.

476 (5) If a person initiates judicial proceedings to
477 determine the decisionmaker's incapacity or for the appointment
478 of a guardian advocate, the supported decisionmaking agreement
479 remains in effect until the court enters an order determining
480 otherwise. However, any related documents where surrogate
481 decisionmaking power was granted by the decisionmaker, including
482 a power of attorney or designation of a health care surrogate,
483 shall be treated in accordance with chapter 744 and the relevant
484 authorizing statute.

485 Section 14. Section 746.108, Florida Statutes, is created
486 to read:

487 746.108 Access to information.—

488 (1) A supporter may assist the decisionmaker with
489 obtaining any information to which the decisionmaker is
490 entitled, including, but not limited to, protected health
491 information under the Health Insurance Portability and
492 Accountability Act of 1996, 42 U.S.C. s. 1320d, educational
493 records under the Family Educational Rights and Privacy Act of
494 1974, 20 U.S.C. s. 1232g, or information protected by 42 U.S.C.
495 s. 290dd-2 and 42 C.F.R. part 2. Before the supporter assists
496 the decisionmaker with obtaining such information, the
497 decisionmaker must provide his or her signed and dated specific
498 consent for the supporter to provide assistance.

499 (2) The supporter shall ensure that all information
500 collected on behalf of the decisionmaker under this section is

501 kept privileged and confidential, as applicable; is not subject
502 to unauthorized access, use, or disclosure; and is properly
503 disposed of when appropriate.

504 Section 15. Section 746.109, Florida Statutes, is created
505 to read:

506 746.109 Elements of a supported decisionmaking agreement.—

507 (1) A supported decisionmaking agreement must do all of
508 the following:

509 (a) Identify the decisionmaker.

510 (b) Name at least one supporter.

511 (c) Describe the decisionmaking assistance that each
512 supporter may provide the decisionmaker.

513 (d) State the duration of the supported decisionmaking
514 agreement and how it can be terminated or changed.

515 (e) Provide a notice to third parties describing the
516 purpose of the supported decisionmaking agreement.

517 (f) Provide instructions on how to report abuse, neglect,
518 or exploitation of the decisionmaker, including the website,
519 telephone number, teletype number, and fax number for the
520 Department of Children and Families' central abuse hotline.

521 (g) Include, for each supporter, a signed declaration of
522 supporter, as provided in s. 746.1011(10).

523 (2) A supported decisionmaking agreement may do any of the
524 following:

525 (a) Appoint more than one supporter.

526 (b) Appoint an alternate to act in the place of a
 527 supporter under circumstances specified in the agreement.

528 (c) Authorize a supporter to share information with any
 529 other supporter or other person named in the agreement.

530 (d) Refer to other legal documents, such as a power of
 531 attorney as provided in chapter 709.

532 (e) Include written approval from a guardian or guardian
 533 advocate, if appropriate, as provided in s. 746.105(5).

534 Section 16. Section 746.1011, Florida Statutes, is created
 535 to read:

536 746.1011 Suggested form.—A supported decisionmaking
 537 agreement must contain the elements described in s. 746.109.
 538 Although the form provides for two supporters, the decisionmaker
 539 may alter the form to include additional supporters. A supported
 540 decisionmaking agreement may, but need not, be in the following
 541 form:

542
 543 STATUTORY FORM FOR
 544 SUPPORTED DECISIONMAKING AGREEMENT

545
 546 SUPPORTED DECISIONMAKING AGREEMENT OF ...(print name)...

547
 548 This is the Supported Decisionmaking Agreement of ...(print
 549 name)...., date of birth, of ...(city)...., Florida.

551 (1) INTRODUCTION. I,....., want to have one or more
 552 persons I trust help me make decisions, obtain and understand
 553 the information I need to make my decisions, and tell other
 554 people about my decisions. The people who will help me are my
 555 "supporters."

556 This is a written agreement between me ("decisionmaker")
 557 and each of my supporters. I am stating in this agreement what
 558 kind of help each of my supporters will give me and whether I
 559 will delegate any powers to them to exercise on my behalf.

561 UNLESS EXPRESSLY AUTHORIZED TO DO SO, A SUPPORTER APPOINTED
 562 UNDER THIS AGREEMENT DOES NOT MAKE DECISIONS FOR ME.

564 Each of my supporters may exercise their authority
 565 independently:

566 Yes No

568 My supporters may share information with each other:

569 Yes No

571 (2) SUPPORTERS AND POWERS GRANTED TO SUPPORTERS. These
 572 are my supporters and how they will help me make decisions:

573 SUPPORTER NO. 1

574 Name:... (name) ...

575 Address:... (address) ...

576 Telephone Number:...(telephone number)...
 577 E-mail Address:...(e-mail address)...
 578
 579 I want this supporter to help me with (Make a cross mark X
 580 in the space before each description, as desired):
 581 Making choices about food and clothing.
 582 Making choices about where and with whom I live.
 583 Making choices about my health and health care.
 584 Making choices about how I spend my time.
 585 Making choices about where I work.
 586 Making choices about my education.
 587 Making choices about my support services, including
 588 applying for public benefits and seeking home care services,
 589 such as laundry and cooking, transportation, and companionship.
 590 Making choices about how I spend my money and how I
 591 save my money, including managing any public benefits I may
 592 receive.
 593 Making choices about legal matters.
 594 Making choices about
 595 Making choices about
 596 Making choices about
 597 Making choices about
 598
 599 I want this supporter to help me by:
 600

601 I do not want this supporter to help me by:

602
 603 I am attaching another legal document, such as a power of
 604 attorney or a health care surrogate designation, for this
 605 supporter:

606 Yes No

608 SUPPORTER NO. 2

609 Name:...(name)...

610 Address:...(address)...

611 Telephone Number:...(telephone number)...

612 E-mail Address:...(e-mail address)...

613
 614 I want this supporter to help me with (Make a cross mark X
 615 in the space before each description, as desired):

616 Making choices about food and clothing.

617 Making choices about where and with whom I live.

618 Making choices about my health and health care.

619 Making choices about how I spend my time.

620 Making choices about where I work.

621 Making choices about my education.

622 Making choices about my support services, including
 623 applying for public benefits and seeking home care services,
 624 such as laundry and cooking, transportation, and companionship.

625 Making choices about how I spend my money and how I

626 save my money, including managing any public benefits I may
 627 receive.

628 Making choices about legal matters.

629 Making choices about

630 Making choices about

631 Making choices about

632 Making choices about

633

634 I want this supporter to help me by:

635

636 I do not want this supporter to help me by:

637

638 I am attaching another legal document, such as a power of
 639 attorney or a health care surrogate designation, for this
 640 supporter:

641 Yes No

642

643 ALTERNATE SUPPORTER. If one of my supporters dies, becomes
 644 unable to act as my supporter, refuses to act as my supporter,
 645 or terminates the supporter's part of this agreement, I want the
 646 following person to become my supporter and help me with the
 647 areas the original supporter was helping me with:

648

649 Name:...(name)...

650 Address:...(address)...

651 Telephone Number:...(telephone number)...

652 E-mail Address:...(e-mail address)...

653

654 (3) PRENEED GUARDIAN(S). I want the following supporters,
 655 in this order, to be my preneed guardians, as described in s.
 656 744.3045, Florida Statutes, in case a court ever determines that
 657 I need a guardian.

658 1. ...(name)...

659 2. ...(name)...

660 3. ...(name)...

661

662 If I appoint a preneed guardian, I understand that I must
 663 sign this agreement myself in the presence of at least two
 664 subscribing adult witnesses present at the same time.

665

666 (4) INFORMATION ACCESS FORMS. I am attaching to this
 667 agreement:

668

669 A form that allows my supporter(s) to obtain my health
 670 information under the Health Insurance Portability and
 671 Accountability Act:

672 Yes No

673

674 A form that allows my supporter(s) to access my educational
 675 records under the Family Educational Rights and Privacy Act of

676 1974:

677 Yes No

678

679 (5) GUARDIANS AND GUARDIAN ADVOCATES. If I have a
 680 guardian or guardian advocate and this agreement relates to any
 681 of the rights that have been delegated to my guardian or
 682 guardian advocate, my guardian or guardian advocate must approve
 683 this agreement by signing subsection (12) of this agreement. (If
 684 true, make a cross mark X before the item below):

685

686 My guardian or guardian advocate has signed subsection
 687 (12) of this agreement, approving my use of this agreement.

688

689 (6) NOTICE TO THIRD PARTIES. This is a summary of the
 690 rights and obligations of a supporter as provided under chapter
 691 746, Florida Statutes, which authorizes me to enter into this
 692 agreement. A supporter does not make decisions for the
 693 decisionmaker, but a supporter may provide a decisionmaker with
 694 help when making decisions, obtaining information for decisions,
 695 communicating decisions, and understanding the options,
 696 responsibilities, and consequences of decisions. A supporter may
 697 accompany the decisionmaker and participate in discussions with
 698 other persons. The decisionmaker sets out in this agreement the
 699 areas in which the supporter may help the decisionmaker with
 700 decisions. A third party must recognize a decision or request of

701 the decisionmaker which is made or communicated with the
 702 assistance of a supporter as the decision or request of the
 703 decisionmaker. The decisionmaker or supporter may enforce the
 704 decision or request in law or equity. A decisionmaker may act
 705 without the help of the supporter.

706
 707 (7) DURATION AND TERMINATION OF AGREEMENT. I can end all
 708 or part of this agreement at any time by giving notice to my
 709 supporter(s) orally, in writing, through an assistive technology
 710 device, or by This agreement starts ...(date)... and will
 711 continue until the agreement is terminated by myself or my
 712 supporter(s).

713
 714 (8) SIGNATURE OF DECISIONMAKER. I know that I do not have
 715 to sign this agreement. I am entering into this agreement
 716 voluntarily and without coercion or undue influence. I
 717 understand the nature and effect of this agreement. I know that
 718 I can change this agreement at any time.

719
 720 Signature: ...(sign your name)...
 721 Printed Name:...(print your name)...
 722 Telephone Number:...(telephone number)...
 723 E-mail Address:...(e-mail address)...
 724 Date:...(date)...
 725

726 (9) SIGNATURES OF SUPPORTER(S).
 727 Signature of Supporter No. 1
 728 Signature: ... (sign your name)...
 729 Printed Name: ... (print your name)...
 730 Date: ... (date)...
 731
 732 Signature of Supporter No. 2
 733 Signature: ... (sign your name)...
 734 Printed Name: ... (print your name)...
 735 Date: ... (date)...
 736
 737 Signature of Alternate Supporter
 738 Signature: ... (sign your name)...
 739 Printed Name: ... (print your name)...
 740 Date: ... (date)...
 741
 742 (10) DECLARATIONS OF SUPPORTER(S).
 743 DECLARATION OF SUPPORTER NO. 1.
 744 I, ... (print your name) ..., am the decisionmaker's
 745 ... (relationship to the decisionmaker) I am willing to act
 746 as the decisionmaker's supporter. I understand that my job as a
 747 supporter is to help the decisionmaker make decisions, obtain
 748 and understand information for decisions, communicate decisions,
 749 and understand the options, responsibilities, and consequences
 750 of decisions. My support may include giving the decisionmaker

751 information in a way that the decisionmaker can understand,
752 discussing pros and cons of decisions, and helping the
753 decisionmaker communicate the decisionmaker's decisions. I will
754 act with the care, competence, and diligence ordinarily
755 exercised by individuals in similar circumstances, with due
756 regard either to the possession of, or lack of, special skills
757 or expertise. I know that I may exercise only the authority
758 expressly granted to me in this agreement. I know that I may not
759 make decisions for the decisionmaker, unless expressly
760 authorized to do so in this agreement. I will not exert undue
761 influence on the decisionmaker. I will not sign on behalf of the
762 decisionmaker or provide an electronic signature of the
763 decisionmaker to a third party, unless expressly authorized to
764 do so in another legal document such as a power of attorney. I
765 will access the decisionmaker's personal information only to the
766 extent authorized in this agreement. I will ensure that all
767 information collected on behalf of the decisionmaker is kept
768 private and confidential; is not subject to unauthorized access,
769 use, or disclosure; and is properly disposed of when
770 appropriate. I will not use information I receive under this
771 agreement for a purpose other than as authorized by the
772 decisionmaker for decisionmaking, unless the decisionmaker
773 consents to another use. I understand that under chapter 825,
774 Florida Statutes, it is a crime to commit acts of abuse,
775 neglect, or exploitation against a person with a disability and

776 that the penalty for doing so may include fines and prison time.

777

778 Signature: ... (sign your name)...

779 Printed Name: ... (print your name)...

780 Date: ... (date)...

781

782 DECLARATION OF SUPPORTER NO. 2.

783 I, ... (print your name) ..., am the decisionmaker's

784 ... (relationship to the decisionmaker) I am willing to act

785 as the decisionmaker's supporter. I understand that my job as a

786 supporter is to help the decisionmaker make decisions, obtain

787 and understand information for decisions, communicate decisions,

788 and understand the options, responsibilities, and consequences

789 of decisions. My support may include giving the decisionmaker

790 information in a way that the decisionmaker can understand,

791 discussing pros and cons of decisions, and helping the

792 decisionmaker communicate the decisionmaker's decisions. I will

793 act with the care, competence, and diligence ordinarily

794 exercised by individuals in similar circumstances, with due

795 regard either to the possession of, or lack of, special skills

796 or expertise. I know that I may exercise only the authority

797 expressly granted to me in this agreement. I know that I may not

798 make decisions for the decisionmaker, unless expressly

799 authorized to do so in this agreement. I will not exert undue

800 influence on the decisionmaker. I will not sign on behalf of the

801 decisionmaker or provide an electronic signature of the
 802 decisionmaker to a third party, unless expressly authorized to
 803 do so in another legal document such as a power of attorney. I
 804 will access the decisionmaker's personal information only to the
 805 extent authorized in this agreement. I will ensure that all
 806 information collected on behalf of the decisionmaker is kept
 807 private and confidential; is not subject to unauthorized access,
 808 use, or disclosure; and is properly disposed of when
 809 appropriate. I will not use information I receive under this
 810 agreement for a purpose other than as authorized by the
 811 decisionmaker for decisionmaking, unless the decisionmaker
 812 consents to another use. I understand that under chapter 825,
 813 Florida Statutes, it is a crime to commit acts of abuse,
 814 neglect, or exploitation against a person with a disability and
 815 that the penalty for doing so may include fines and prison time.

816
 817 Signature: ... (sign your name)...
 818 Printed Name: ... (print your name)...
 819 Date: ... (date)...

820
 821 (11) NOTARIZATION OR WITNESSING. The signatures on this
 822 agreement must be either (1) notarized, or (2) witnessed by two
 823 adult subscribing witnesses.

824
 825 NOTARIZATION

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STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me by
means of physical presence or online notarization,
this day of.....,, by the decisionmaker and supporters
signed above.

....
Signature of Notary Public - State of Florida

....
Print, Type, or Stamp Commissioned Name of Notary Public

DECISIONMAKER,
.... Personally Known OR Produced Identification
Type of Identification Produced

SUPPORTER NO. 1,
.... Personally Known OR Produced Identification
Type of Identification Produced

SUPPORTER NO. 2,
.... Personally Known OR Produced Identification

851 Type of Identification Produced

852

853 ALTERNATE SUPPORTER,

854 Personally Known OR Produced Identification

855 Type of Identification Produced

856

857 WITNESSING

858

859 If the signatures are not notarized, two adults must
 860 witness the signatures of the decisionmaker, the supporter(s),
 861 and any alternate supporter. If this agreement designates a
 862 preneed guardian, it must be signed before two attesting
 863 witnesses present at the same time. A witness CANNOT be a
 864 supporter named in this agreement.

865

866 Witness Signature: ...(sign your name)...

867 Printed Name: ...(print your name)...

868 Date: ...(date)...

869

870 Witness Signature: ...(sign your name)...

871 Printed Name: ...(print your name)...

872 Date: ...(date)...

873

874 (12) APPROVAL BY GUARDIAN OR GUARDIAN ADVOCATE.

875 I,, am the guardian OR guardian advocate of

876 I have read and understand the nature and effect of this
 877 agreement. I approve the use of this agreement by ... to obtain
 878 support in making decisions.

879
 880 Signature: ... (sign your name)...
 881 Printed Name: ... (print your name)...
 882 Date: ... (date)...
 883

884 WARNING: PROTECTION FOR DECISIONMAKER

885
 886 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS
 887 AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE
 888 THAT THE ADULT NAMED AS A DECISIONMAKER IS BEING ABUSED,
 889 NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON MAY REPORT
 890 THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE FLORIDA
 891 DEPARTMENT OF CHILDREN AND FAMILIES' CENTRAL ABUSE HOTLINE:

892
 893 ONLINE: <https://reportabuse.dcf.state.fl.us/>
 894 PHONE: 1-800-962-2873
 895 FLORIDA RELAY: 711
 896 TTY: 800-955-8771
 897 FAX: 800-914-0004

898 Section 17. Section 746.1012, Florida Statutes, is created
 899 to read:
 900 746.1012 Recognition of supporters.—A decision or request

901 communicated with the assistance of a supporter in conformity
902 with this chapter must be recognized for the purposes of any
903 provision of law as the decision or request of the decisionmaker
904 and may be enforced by the decisionmaker or supporter in law or
905 equity on the same basis as a decision or request of the
906 decisionmaker.

907 Section 18. Section 746.1013, Florida Statutes, is created
908 to read:

909 746.1013 Reliance on agreement; limitation of liability.-

910 (1) A person who is provided with an original supported
911 decisionmaking agreement, or a copy of the supported
912 decisionmaking agreement, may rely on the agreement.

913 (2) A person is not subject to criminal or civil liability
914 and has not engaged in professional misconduct for an act or
915 omission if the act or omission is done in good faith and in
916 reliance upon a supported decisionmaking agreement.

917 (3) Any health care provider, as defined in s. 408.07, who
918 provides health care based on the consent of a decisionmaker,
919 made with a supporter provided through a duly executed supported
920 decisionmaking agreement, or who respects and acts consistently
921 with the authority given to a supporter by a duly executed
922 supported decisionmaking agreement is immune from any action
923 alleging that the agreement was invalid unless the entity,
924 custodian, or organization had actual knowledge or notice that
925 the decisionmaker had revoked such authorization or that the

926 agreement was invalid.

927 (4) Any public or private entity, custodian, or
928 organization that discloses personal information about a
929 decisionmaker to a supporter who is authorized to access or
930 assist the decisionmaker in accessing that information is immune
931 from any action alleging that it improperly or unlawfully
932 disclosed such information to the supporter, unless the entity,
933 custodian, or organization had actual knowledge that the
934 decisionmaker had revoked such authorization.

935 (5) Any public or private educational agency or
936 institution may rely on any supported decisionmaking agreement
937 and shall allow the participation of supporters authorized by
938 the supported decisionmaking agreement in all educational
939 events, activities, meetings, and conferences, including
940 individual education plan meetings in public schools.

941 Educational entities shall also provide authorized supporters
942 with access to educational records upon receipt of a signed and
943 dated specific consent, as described in s. 746.108.

944 (6) This section may not be construed to provide immunity
945 from actions alleging that an entity or a person has done any of
946 the following:

947 (a) Caused personal injury as a result of a negligent,
948 reckless, or intentional act.

949 (b) Acted inconsistently with the expressed wishes of the
950 decisionmaker.

951 (c) In the case of a health care provider, failed to
 952 provide information to either a decisionmaker or the
 953 decisionmaker's supporter which would be necessary for informed
 954 consent.

955 (d) Otherwise acted inconsistently with applicable law.

956 (7) The existence or availability of a supported
 957 decisionmaking agreement does not relieve any entity or person
 958 of any legal obligation to provide services to persons with
 959 disabilities, including the obligation to provide reasonable
 960 accommodations or auxiliary aids and services such as
 961 interpretation services and communication supports to
 962 individuals with disabilities under the Americans with
 963 Disabilities Act.

964 Section 19. Section 746.1014, Florida Statutes, is created
 965 to read:

966 746.1014 Supported decisionmaking in public schools.—

967 (1) When a public school provides information regarding
 968 guardianship to students, parents, guardians, or any other
 969 person exercising supervisory authority over a student in place
 970 of a parent, the school must also provide information about
 971 supported decisionmaking agreements.

972 (2) Each public school shall ensure that any informational
 973 materials, including documents, brochures, and presentations,
 974 which provide information on guardianship include information on
 975 supported decisionmaking and the process for signing a supported

976 decisionmaking agreement as provided under this chapter. A
977 public school may comply with this section by revising materials
978 as they are due to be printed in regular course, or by revising
979 materials by July 1, 2024, whichever occurs later.

980 (3) Each public school shall provide information and
981 training on supported decisionmaking to all staff members who
982 are tasked with assisting with or providing information on
983 transition to postsecondary education and career opportunities.
984 A public school may comply with this section by incorporating
985 the topic of supported decisionmaking into its regularly
986 scheduled meetings, trainings, and events.

987 Section 20. Subsection (3) of section 744.2003, Florida
988 Statutes, is amended to read:

989 744.2003 Regulation of professional guardians;
990 application; bond required; educational requirements.-

991 (3) Each professional guardian defined in s. 744.102(18)
992 ~~s. 744.102(17)~~ and public guardian must receive a minimum of 40
993 hours of instruction and training. Each professional guardian
994 must receive a minimum of 16 hours of continuing education every
995 2 calendar years after the year in which the initial 40-hour
996 educational requirement is met. The instruction and education
997 must be completed through a course approved or offered by the
998 Office of Public and Professional Guardians. The expenses
999 incurred to satisfy the educational requirements prescribed in
1000 this section may not be paid with the assets of any ward. This

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1001 subsection does not apply to any attorney who is licensed to
1002 practice law in this state or an institution acting as guardian
1003 under s. 744.2002(7).

1004 Section 21. This act shall take effect July 1, 2021.