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A bill to be entitled  
 An act relating to supported decisionmaking for adults with disabilities; amending s. 393.063, F.S.; providing definitions; amending s. 393.065, F.S.; revising a requirement that the Agency for Persons with Disabilities provide specified information to certain persons to conform to changes made by the act; amending s. 393.12, F.S.; revising the requirements for petitions to appoint guardian advocates for persons with developmental disabilities to conform to changes made by the act; creating s. 393.121, F.S.; authorizing adults with disabilities to enter into supported decisionmaking agreements under certain circumstances; prohibiting the use of such agreements as evidence of incapacity; providing that such agreements do not preclude a decisionmaker from acting independently; providing criteria for supporters; providing requirements for supported decisionmaking agreements; requiring that a supporter act in good faith; authorizing adults with disabilities who have appointed guardian advocates to enter into supported decisionmaking agreements under certain circumstances; amending ss. 383.141 and 1002.394, F.S.; conforming cross-references; providing an effective date.

26 Be It Enacted by the Legislature of the State of Florida:

27

28 Section 1. Subsections (11) through (42), of section  
 29 393.063, Florida Statutes, are renumbered as subsections (12)  
 30 through (43), respectively, present subsections (43), (44),  
 31 (45), and (46) are renumbered as subsections (46), (47), (49),  
 32 and (50), respectively, and new subsections (11), (44), (45),  
 33 and (48) are added to that section, to read:

34 393.063 Definitions.—For the purposes of this chapter, the  
 35 term:

36 (11) "Decisionmaker" means an adult with a disability who  
 37 has entered into a supported decisionmaking agreement with at  
 38 least one supporter.

39 (44) "Supported decisionmaking" means a process of  
 40 supporting an adult with a disability to assist him or her with  
 41 understanding the options, responsibilities, and consequences of  
 42 a life decision and enabling him or her to make a life decision  
 43 without impeding self-determination.

44 (45) "Supported decisionmaking agreement" means a written  
 45 agreement between a decisionmaker and at least one supporter for  
 46 supported decisionmaking.

47 (48) "Supporter" means a qualified adult who has entered  
 48 into a supported decisionmaking agreement under s. 393.121(1).

49 Section 2. Paragraph (a) of subsection (10) of section  
 50 393.065, Florida Statutes, is amended, and paragraphs (b) and

51 (c) of that subsection are republished, to read:

52 393.065 Application and eligibility determination.—

53 (10) (a) The agency shall provide the following information  
54 to all applicants or their parents, legal guardians, or family  
55 members:

56 1. A brief overview of the vocational rehabilitation  
57 services offered through the Division of Vocational  
58 Rehabilitation of the Department of Education, including a  
59 hyperlink or website address that provides access to the  
60 application for such services;

61 2. A brief overview of the Florida ABLE program as  
62 established under s. 1009.986, including a hyperlink or website  
63 address that provides access to the application for establishing  
64 an ABLE account as defined in s. 1009.986(2);

65 3. A brief overview of the supplemental security income  
66 benefits and social security disability income benefits  
67 available under Title XVI of the Social Security Act, as  
68 amended, including a hyperlink or website address that provides  
69 access to the application for such benefits;

70 4. A statement indicating that the applicant's local  
71 public school district may provide specialized instructional  
72 services, including transition programs, for students with  
73 special education needs;

74 5. A brief overview of programs and services funded  
75 through the Florida Center for Students with Unique Abilities,

76 including contact information for each state-approved Florida  
 77 Postsecondary Comprehensive Transition Program;

78 6. A brief overview of decisionmaking options for  
 79 individuals with disabilities, including supported  
 80 decisionmaking under s. 393.121, guardianship under chapter 744,  
 81 and alternatives to guardianship as defined in s. 744.334(1),  
 82 which may include contact information for organizations that the  
 83 agency believes would be helpful in assisting with such  
 84 decisions;

85 7. A brief overview of the referral tools made available  
 86 through the agency, including a hyperlink or website address  
 87 that provides access to such tools; and

88 8. A statement indicating that some waiver providers may  
 89 serve private-pay individuals.

90 (b) The agency must provide the information required in  
 91 paragraph (a) in writing to an applicant or his or her parent,  
 92 legal guardian, or family member along with a written disclosure  
 93 statement in substantially the following form:

94 DISCLOSURE STATEMENT

95 Each program and service has its own eligibility requirements.  
 96 By providing the information specified in section  
 97 393.065(10)(a), Florida Statutes, the agency does not guarantee  
 98 an applicant's eligibility for or enrollment in any program or  
 99 service.

100 (c) The agency shall also publish the information required

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101 in paragraph (a) and the disclosure statement in paragraph (b)  
102 on its website, and shall provide that information and statement  
103 annually to each applicant placed on the waiting list or to the  
104 parent, legal guardian, or family member of such applicant.

105 Section 3. Paragraphs (d), (e), and (f) of subsection (3)  
106 of section 393.12, Florida Statutes, are redesignated as  
107 paragraphs (e), (f), and (g), respectively, paragraph (a) of  
108 subsection (4) and subsection (7) are amended, and a new  
109 paragraph (d) is added to subsection (3) of that section, to  
110 read:

111 393.12 Capacity; appointment of guardian advocate.—

112 (3) PETITION.—A petition to appoint a guardian advocate  
113 for a person with a developmental disability may be executed by  
114 an adult person who is a resident of this state. The petition  
115 must be verified and must:

116 (d) State any effort to use decisionmaking options before  
117 seeking a guardian advocate, including entering into a supported  
118 decisionmaking agreement under s. 393.121, a durable power of  
119 attorney under chapter 709, or an advance directive under  
120 chapter 765. The statement must include all of the following  
121 information:

122 1. Each guardianship alternative that was considered or  
123 implemented.

124 2. If a guardianship alternative was not considered or  
125 implemented, the reason why a guardianship alternative was not

126 | considered or implemented.

127 | 3. Any reason why a guardianship alternative is  
 128 | insufficient to meet the needs of the person with a  
 129 | developmental disability.

130 | (4) NOTICE.—

131 | (a) Notice of the filing of the petition must be given to  
 132 | the person with a developmental disability, verbally and in  
 133 | writing in the language of the person and in English. Notice  
 134 | must also be given to the next of kin of the person with a  
 135 | developmental disability under ~~as defined in~~ chapter 744, a  
 136 | health care surrogate designated under ~~pursuant to~~ an advance  
 137 | directive under chapter 765, an agent under a durable power of  
 138 | attorney, a supporter who has entered into a supported  
 139 | decisionmaking agreement under s. 393.121, and such other  
 140 | persons as the court may direct. A copy of the petition to  
 141 | appoint a guardian advocate must be served with the notice.

142 | (7) ADVANCE DIRECTIVES FOR HEALTH CARE, AND DURABLE POWER  
 143 | OF ATTORNEY, AND SUPPORTED DECISIONMAKING AGREEMENTS.—In each  
 144 | proceeding in which a guardian advocate is appointed under this  
 145 | section, the court shall determine whether the person with a  
 146 | developmental disability has executed any valid advance  
 147 | directive under chapter 765, ~~or~~ a durable power of attorney  
 148 | under chapter 709, or a supported decisionmaking agreement under  
 149 | s. 393.121.

150 | (a) If the person with a developmental disability has

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

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

173 |       (c) If an advance directive exists, the court shall  
174 | specify in its order and letters of guardian advocacy what  
175 | authority, if any, the guardian advocate shall exercise over the

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

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

190 (e) If a supported decisionmaking agreement exists, the  
 191 court shall specify in its order and letters of guardian  
 192 advocacy the part of the agreement that is suspended.

193 Section 4. Section 393.121, Florida Statutes, is created  
 194 to read:

195 393.121 Supported decisionmaking.-

196 (1) An adult with a disability may enter into a supported  
 197 decisionmaking agreement if he or she:

198 (a) Voluntarily enters into the agreement without coercion  
 199 or undue influence; and

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



201        (2) The existence of a supported decisionmaking agreement  
 202 may not be used as evidence of incapacity and does not preclude  
 203 the decisionmaker from acting independently.

204        (3) A supporter must be an adult and, unless he or she is  
 205 an immediate family member of the decisionmaker, may not be:

206            (a) An employer or employee of the decisionmaker;

207            (b) A health care provider of the decisionmaker;

208            (c) A creditor or debtor of the decisionmaker;

209            (d) An employee or contractor of a state agency who  
 210 provides services directly to the decisionmaker;

211            (e) A person who provides paid support services, excluding  
 212 decisionmaking assistance, directly to the decisionmaker;

213            (f) A landlord, nursing home, assisted living facility, or  
 214 an employee of a landlord, nursing home, or assisted living  
 215 facility of the decisionmaker; or

216            (g) A person against whom a protective order or  
 217 restraining order has been entered by a court at the request of  
 218 or on behalf of the decisionmaker.

219        (4) An adult with a disability may voluntarily, without  
 220 undue influence or coercion, enter into a supported  
 221 decisionmaking agreement that authorizes a supporter to:

222            (a) Assist the decisionmaker in understanding the options,  
 223 responsibilities, and consequences of life decisions;

224            (b) Assist the decisionmaker in accessing, collecting, and  
 225 obtaining information and records relevant to a life decision,

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226 including, but not limited to, medical, psychological,  
227 financial, educational, or treatment records, to which the  
228 decisionmaker is entitled, from any person or entity. Such  
229 information and records must include, but need not be limited  
230 to, protected health information under the Health Insurance  
231 Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d;  
232 educational records under the Family Educational Rights and  
233 Privacy Act of 1974, 20 U.S.C. s. 1232g; information available  
234 under the Individuals with Disabilities Education Act, 20 U.S.C.  
235 ss. 1400, et seq.; or records of the identity, diagnosis,  
236 prognosis, or treatment of a patient maintained in connection  
237 with the performance of any program or activity relating to  
238 substance abuse, education, prevention, training, treatment,  
239 rehabilitation, or research which are protected by 42 U.S.C. s.  
240 290dd-2 and 42 C.F.R. part II;

241 (c) Assist the decisionmaker in communicating his or her  
242 decisions; or

243 (d) Access the decisionmaker's personal information, to  
244 the extent authorized by the supported decisionmaking agreement.

245 (5) A supporter shall act in good faith in all actions  
246 taken under the supported decisionmaking agreement.

247 (6) An adult with a disability who has a guardian advocate  
248 may enter into a supported decisionmaking agreement if the  
249 guardian advocate grants written approval to do so. The adult  
250 with a disability does not need approval from the guardian

251 advocate if the supported decisionmaking agreement only affects  
 252 rights that were not removed by the court.

253 Section 5. Paragraph (b) of subsection (1) of section  
 254 383.141, Florida Statutes, is amended to read:

255 383.141 Prenatally diagnosed conditions; patient to be  
 256 provided information; definitions; information clearinghouse;  
 257 advisory council.—

258 (1) As used in this section, the term:

259 (b) "Developmental disability" includes Down syndrome and  
 260 other developmental disabilities defined by s. 393.063 ~~s.~~  
 261 ~~393.063(12)~~.

262 Section 6. Paragraph (d) of subsection (2) of section  
 263 1002.394, Florida Statutes, is amended to read:

264 1002.394 The Family Empowerment Scholarship Program.—

265 (2) DEFINITIONS.—As used in this section, the term:

266 (d) "Disability" means, for a 3- or 4-year-old child or  
 267 for a student in kindergarten to grade 12, autism spectrum  
 268 disorder, as defined in the Diagnostic and Statistical Manual of  
 269 Mental Disorders, Fifth Edition, published by the American  
 270 Psychiatric Association; cerebral palsy, as defined in s.  
 271 393.063; Down syndrome, as defined in s. 393.063; an  
 272 intellectual disability, as defined in s. 393.063; a speech  
 273 impairment; a language impairment; an orthopedic impairment; an  
 274 other health impairment; an emotional or a behavioral  
 275 disability; a specific learning disability, including, but not

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276 | limited to, dyslexia, dyscalculia, or developmental aphasia;  
277 | Phelan-McDermid syndrome, as defined in s. 393.063; Prader-Willi  
278 | syndrome, as defined in s. 393.063; spina bifida, as defined in  
279 | s. 393.063; being a high-risk child, as defined in s.  
280 | 393.063(24)(a) ~~s. 393.063(23)(a)~~; muscular dystrophy; Williams  
281 | syndrome; rare diseases which affect patient populations of  
282 | fewer than 200,000 individuals in the United States, as defined  
283 | by the National Organization for Rare Disorders; anaphylaxis; a  
284 | hearing impairment, including deafness; a visual impairment,  
285 | including blindness; traumatic brain injury; hospital or  
286 | homebound; or identification as dual sensory impaired, as  
287 | defined by rules of the State Board of Education and evidenced  
288 | by reports from local school districts. The term "hospital or  
289 | homebound" includes a student who has a medically diagnosed  
290 | physical or psychiatric condition or illness, as defined by the  
291 | state board in rule, and who is confined to the home or hospital  
292 | for more than 6 months.

293 |       Section 7. This act shall take effect July 1, 2022.