

1 A bill to be entitled
2 An act relating to supported decisionmaking for adults
3 with disabilities; amending s. 393.063, F.S.;
4 providing definitions; amending s. 393.065, F.S.;
5 revising a requirement that the Agency for Persons
6 with Disabilities provide specified information to
7 certain persons to conform to changes made by the act;
8 amending s. 393.12, F.S.; revising the requirements
9 for petitions to appoint guardian advocates for
10 persons with developmental disabilities to conform to
11 changes made by the act; creating s. 393.121, F.S.;
12 authorizing adults with disabilities to enter into
13 supported decisionmaking agreements under certain
14 circumstances; prohibiting the use of such agreements
15 as evidence of incapacity; providing that such
16 agreements do not preclude a decisionmaker from acting
17 independently; providing criteria for supporters;
18 providing requirements for supported decisionmaking
19 agreements; requiring that a supporter act in good
20 faith; authorizing adults with disabilities who have
21 appointed guardian advocates to enter into supported
22 decisionmaking agreements under certain circumstances;
23 amending ss. 383.141 and 1002.394, F.S.; conforming
24 cross-references; providing an effective date.
25

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

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

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 decisionmaker's health care provider as defined in
 208 s. 768.381(1);

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

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

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

214 (f) A landlord or an employee of a landlord of the
 215 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,

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

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.