

By Senator Torres

15-01268-22

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1                   A bill to be entitled  
2       An act relating to supported decisionmaking for adults  
3       with disabilities; amending s. 393.063, F.S.; defining  
4       terms; amending s. 393.065, F.S.; revising a  
5       requirement that the Agency for Persons with  
6       Disabilities provide specified information to certain  
7       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      specifying actions supporters may be authorized to  
19      take pursuant to a supported decisionmaking agreement;  
20      requiring that a supporter act in good faith;  
21      authorizing adults with disabilities who have  
22      appointed guardian advocates to enter into supported  
23      decisionmaking agreements under certain circumstances;  
24      amending ss. 383.141 and 1002.394, F.S.; conforming  
25      cross-references; providing an effective date.

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

28  
29       Section 1. Present subsections (11) through (42) and (43),

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30 (44), (45), and (46) of section 393.063, Florida Statutes, are  
31 redesignated as subsections (12) through (43) and (46), (47),  
32 (49), and (50), respectively, and new subsections (11), (44),  
33 (45), 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.

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

48 Section 2. Paragraph (a) of subsection (10) of section  
49 393.065, Florida Statutes, is amended, and paragraphs (b) and  
50 (c) of that subsection are republished, to read:

51 393.065 Application and eligibility determination.—

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

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

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59 application for such services;

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

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

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

73 5. A brief overview of programs and services funded through  
74 the Florida Center for Students with Unique Abilities, including  
75 contact information for each state-approved Florida  
76 Postsecondary Comprehensive Transition Program;

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

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

87 8. A statement indicating that some waiver providers may

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88 serve private-pay individuals.

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

93

94 DISCLOSURE STATEMENT

95

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

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

106 Section 3. Subsection (3), paragraph (a) of subsection (4),  
107 and subsection (7) of section 393.12, Florida Statutes, are  
108 amended to read:

109 393.12 Capacity; appointment of guardian advocate.—

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

114 (a) State the name, age, and present address of the  
115 petitioner and his or her relationship to the person with a  
116 developmental disability;

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117 (b) State the name, age, county of residence, and present  
118 address of the person with a developmental disability;

119 (c) Allege that the petitioner believes that the person  
120 needs a guardian advocate and specify the factual information on  
121 which such belief is based;

122 (d) State any effort to use decisionmaking options before  
123 seeking a guardian advocate, including entering into a supported  
124 decisionmaking agreement under s. 393.121, a durable power of  
125 attorney under chapter 709, or an advance directive under  
126 chapter 765. The statement must include all of the following  
127 information:

128 1. Each guardianship alternative that was considered or  
129 implemented.

130 2. If a guardianship alternative was not considered or  
131 implemented, the reason why a guardianship alternative was not  
132 considered or implemented.

133 3. Any reason why a guardianship alternative is  
134 insufficient to meet the needs of the person with a  
135 developmental disability;

136 (e) Specify the exact areas in which the person lacks the  
137 decisionmaking ability to make informed decisions about his or  
138 her care and treatment services or to meet the essential  
139 requirements for his or her physical health or safety;

140 (f) ~~(e)~~ Specify the legal disabilities to which the person  
141 is subject; and

142 (g) ~~(f)~~ State the name of the proposed guardian advocate,  
143 the relationship of that person to the person with a  
144 developmental disability; the relationship that the proposed  
145 guardian advocate had or has with a provider of health care

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146 services, residential services, or other services to the person  
147 with a developmental disability; and the reason why this person  
148 should be appointed. If a willing and qualified guardian  
149 advocate cannot be located, the petition shall so state.

150 (4) NOTICE.—

151 (a) Notice of the filing of the petition must be given to  
152 the person with a developmental disability, verbally and in  
153 writing in the language of the person and in English. Notice  
154 must also be given to the next of kin of the person with a  
155 developmental disability under ~~as defined in~~ chapter 744, a  
156 health care surrogate designated under ~~pursuant to~~ an advance  
157 directive under chapter 765, an agent under a durable power of  
158 attorney, a supporter who has entered into a supported  
159 decisionmaking agreement under s. 393.121, and such other  
160 persons as the court may direct. A copy of the petition to  
161 appoint a guardian advocate must be served with the notice.

162 (7) ADVANCE DIRECTIVES FOR HEALTH CARE, AND DURABLE POWER  
163 OF ATTORNEY, AND SUPPORTED DECISIONMAKING AGREEMENTS.—In each  
164 proceeding in which a guardian advocate is appointed under this  
165 section, the court shall determine whether the person with a  
166 developmental disability has executed any valid advance  
167 directive under chapter 765, ~~or~~ a durable power of attorney  
168 under chapter 709, or a supported decisionmaking agreement under  
169 s. 393.121.

170 (a) If the person with a developmental disability has  
171 executed an advance directive, a ~~or~~ durable power of attorney,  
172 or a supported decisionmaking agreement, the court must consider  
173 and find whether the documents will sufficiently address the  
174 needs of the person with a developmental disability for whom the

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175 guardian advocate is sought. A guardian advocate may not be  
176 appointed if the court finds that the advance directive, ~~or~~  
177 durable power of attorney, or supported decisionmaking agreement  
178 provides an alternative to the appointment of a guardian  
179 advocate which will sufficiently address the needs of the person  
180 with a developmental disability.

181 (b) If an interested person seeks to contest an advance  
182 directive, a ~~or~~ durable power of attorney, or a supported  
183 decisionmaking agreement executed by a person with a  
184 developmental disability, the interested person must ~~shall~~ file  
185 a verified statement. The verified statement must ~~shall~~ include  
186 the factual basis for the belief that the advance directive, ~~or~~  
187 durable power of attorney, or supported decisionmaking agreement  
188 is invalid or does not sufficiently address the needs of the  
189 person for whom a guardian advocate is sought or that the person  
190 with authority under the advance directive, ~~or~~ durable power of  
191 attorney, or supported decisionmaking agreement is abusing his  
192 or her power.

193 (c) If an advance directive exists, the court must ~~shall~~  
194 specify in its order and letters of guardian advocacy what  
195 authority, if any, the guardian advocate shall exercise over the  
196 person's health care surrogate. Pursuant to the grounds listed  
197 in s. 765.105, the court, upon its own motion, may, with notice  
198 to the health care surrogate and any other appropriate parties,  
199 modify or revoke the authority of the health care surrogate to  
200 make health care decisions for the person with a developmental  
201 disability. For purposes of this section, the term "health care  
202 decision" has the same meaning as in s. 765.101.

203 (d) If any durable power of attorney exists, the court must

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204 ~~shall~~ specify in its order and letters of guardian advocacy what  
205 powers of the agent, if any, are suspended and granted to the  
206 guardian advocate. The court, however, may not suspend any  
207 powers of the agent unless the court determines the durable  
208 power of attorney is invalid or there is an abuse by the agent  
209 of the powers granted.

210 (e) If a supported decisionmaking agreement exists, the  
211 court must specify in its order and letters of guardian advocacy  
212 the part of the agreement which is suspended.

213 Section 4. Section 393.121, Florida Statutes, is created to  
214 read:

215 393.121 Supported decisionmaking.—

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

218 (a) Voluntarily enters into the agreement without coercion  
219 or undue influence; and

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

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

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

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

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

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

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

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



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233 (f) A landlord, nursing home, assisted living facility, or  
234 an employee of a landlord, nursing home, or assisted living  
235 facility of the decisionmaker; or

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

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

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

244 (b) Assist the decisionmaker in accessing, collecting, and  
245 obtaining information and records relevant to a life decision,  
246 including, but not limited to, medical, psychological,  
247 financial, educational, or treatment records, to which the  
248 decisionmaker is entitled, from any person or entity. Such  
249 information and records must include, but need not be limited  
250 to, protected health information under the Health Insurance  
251 Portability and Accountability Act of 1996, 42 U.S.C. s. 1320d;  
252 educational records under the Family Educational Rights and  
253 Privacy Act of 1974, 20 U.S.C. s. 1232g; information available  
254 under the Individuals with Disabilities Education Act, 20 U.S.C.  
255 ss. 1400, et seq.; or records of the identity, diagnosis,  
256 prognosis, or treatment of a patient maintained in connection  
257 with the performance of any program or activity relating to  
258 substance abuse, education, prevention, training, treatment,  
259 rehabilitation, or research which are protected by 42 U.S.C. s.  
260 290dd-2 and 42 C.F.R. part II;

261 (c) Assist the decisionmaker in communicating his or her

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262 decisions; or

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

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

267 (6) An adult with a disability who has a guardian advocate  
268 may enter into a supported decisionmaking agreement if the  
269 guardian advocate grants written approval to do so. The adult  
270 with a disability does not need approval from the guardian  
271 advocate if the supported decisionmaking agreement only affects  
272 rights that were not removed by the court.

273 Section 5. Paragraph (b) of subsection (1) of section  
274 383.141, Florida Statutes, is amended to read:

275 383.141 Prenatally diagnosed conditions; patient to be  
276 provided information; definitions; information clearinghouse;  
277 advisory council.-

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

279 (b) "Developmental disability" includes Down syndrome and  
280 other developmental disabilities defined by s. 393.063 ~~s.~~  
281 ~~393.063(12)~~.

282 Section 6. Paragraph (d) of subsection (2) of section  
283 1002.394, Florida Statutes, is amended to read:

284 1002.394 The Family Empowerment Scholarship Program.-

285 (2) DEFINITIONS.-As used in this section, the term:

286 (d) "Disability" means, for a 3- or 4-year-old child or for  
287 a student in kindergarten to grade 12, autism spectrum disorder,  
288 as defined in the Diagnostic and Statistical Manual of Mental  
289 Disorders, Fifth Edition, published by the American Psychiatric  
290 Association; cerebral palsy~~7~~ as defined in s. 393.063; Down

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291 syndrome, as defined in s. 393.063; an intellectual disability,  
292 as defined in s. 393.063; a speech impairment; a language  
293 impairment; an orthopedic impairment; another ~~an other~~ health  
294 impairment; an emotional or a behavioral disability; a specific  
295 learning disability, including, but not limited to, dyslexia,  
296 dyscalculia, or developmental aphasia; Phelan-McDermid syndrome,  
297 as defined in s. 393.063; Prader-Willi syndrome, as defined in  
298 s. 393.063; spina bifida, as defined in s. 393.063; being a  
299 high-risk child, as defined in s. 393.063(24)(a) ~~s.~~  
300 ~~393.063(23)(a)~~; muscular dystrophy; Williams syndrome; rare  
301 diseases which affect patient populations of fewer than 200,000  
302 individuals in the United States, as defined by the National  
303 Organization for Rare Disorders; anaphylaxis; a hearing  
304 impairment, including deafness; a visual impairment, including  
305 blindness; traumatic brain injury; hospital or homebound; or  
306 identification as dual sensory impaired, as defined by rules of  
307 the State Board of Education and evidenced by reports from local  
308 school districts. The term "hospital or homebound" includes a  
309 student who has a medically diagnosed physical or psychiatric  
310 condition or illness, as defined by the state board in rule, and  
311 who is confined to the home or hospital for more than 6 months.

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