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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Cirino

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SUMMARY

- Establishes a presumption that all adults with developmental disabilities are capable of making their own decisions and are competent to handle their own affairs unless otherwise determined by a court.
- Provides for the establishment of supported decision-making plans between an adult with developmental disabilities (the principal) and one or more supporters.
- Provides that evidence of a supported decision-making plan is an alternative to guardianship.
- Imposes duties on the Department of Developmental Disabilities regarding supported decision-making plans.

DETAILED ANALYSIS

Presumption of capacity and competency

The bill specifies that, based on the principle that all adults with developmental disabilities should be afforded all of the rights established in the Revised Code for individuals with developmental disabilities, all adults with developmental disabilities are presumed capable of making decisions about their lives and activities of daily living and are competent to handle their own affairs, unless otherwise determined by a court.¹

The bill states that the fact an adult has a developmental disability does not, by itself, void the presumption of capacity and competency.²

¹ R.C. 5123.681(A) and 5123.62, not in the bill.

² R.C. 5123.681(B).

Supported decision-making plans

The bill defines a supported decision-making plan as a plan between an adult with a developmental disability (known as the principal) and one or more supporters chosen by the adult.³ Supported decision-making is the process of supporting and accommodating an adult with a developmental disability who is making, communicating, or implementing the adult's own life decisions without impeding the adult's self-determination.⁴ A supported decision-making plan may be created at the request and with the active participation of the principal. The plan may be formal, recorded in writing, or informal, created when the principal relies on natural supports or chosen supporters to assist with decisions in the principal's daily life.⁵

A written supported decision-making plan must be signed and acknowledged by the principal voluntarily, without coercion or undue influence. The principal's signature must be witnessed by either a notary public or two adult witnesses who are not parties to the plan. The witnesses must attest that the plan was signed of the principal's own free will.⁶

The bill prohibits an adult with a developmental disability from being required to enter into a supported decision-making plan.⁷ Further, the manner in which an adult with a developmental disability communicates with others is not grounds to find the adult is not capable of managing the adult's affairs or of entering into a supported decision-making plan.⁸

Role of the supporter

Subject to the principal's choice to act independently or limit a supporter's role, a supporter may assist the principal with all of the following activities:⁹

- Understanding information, options, responsibilities, and consequences associated with decision making;
- Communicating decisions to third parties;
- Obtaining and understanding information relevant to life decisions, including medical, psychological, financial, employment, Medicaid, educational, or other records;
- Monitoring information about the principal's affairs and services, including future services;

³ R.C. 5123.68.

⁴ R.C. 5123.68(C).

⁵ R.C. 5123.682(A).

⁶ R.C. 5123.683.

⁷ R.C. 5123.681(G).

⁸ R.C. 5123.681(C).

⁹ R.C. 5123.684.

- Understanding the principal’s personal values, beliefs, and preferences, including the principal’s cultural, ethnic, or religious heritage and using this information to advocate for the principal’s own personal wishes and decisions;
- Accompanying the principal to and participating in discussions with third parties.

The supporter may take any actions permitted by the principal in the supported decision-making plan. The supporter must help the principal access, collect, or obtain any information relevant to a decision authorized under the supported decision-making plan; however, the principal is not precluded from seeking personal information without the supporter’s assistance. If the supporter assists the principal in accessing personal information protected by federal law, the supporter is required to keep that information confidential.¹⁰ The bill states that it does not prohibit a third party from requiring the principal to execute a release of information or other document to confirm the supported decision-making plan’s continued validity, or the supporter’s continued authorization under the plan.¹¹

Fiduciary duty

The supporter owes the principal a fiduciary duty to act in accordance with the plan, and must not act in contradiction to the supporter’s expressed wishes.¹²

In the event a supporter has a conflict of interest or potential conflict of interest regarding a decision made by the principal, the supporter must:

- Fully disclose the conflict of interest to the principal and any other members of the principal’s support team; and
- Refrain from advising or assisting the principal with the decision.

If a supporter intentionally fails to disclose a conflict of interest, or otherwise breaches the fiduciary duty to the principal, the supporter is liable for all reasonable damages incurred as a result.¹³

Immunity

A person who acts in good faith while relying on a supported decision-making plan is not liable for damages in a civil action and is not subject to criminal prosecution or professional discipline in the absence of actual knowledge that either (1) the plan has been modified or ended, or (2) the principal has not authorized the supporter to engage in the specific action taken.¹⁴

¹⁰ R.C. 5123.684(B) and (C).

¹¹ R.C. 5123.686(A).

¹² R.C. 5123.684(C).

¹³ R.C. 5123.684(D).

¹⁴ R.C. 5123.686.

Modifying or ending a supported decision-making plan

A principal may modify or end a formal or informal supported decision-making plan at any time by notifying the supporter. The principal may modify or end a supported decision-making plan in writing and provide a copy of the written notice to the supporter.¹⁵

Alternative to guardianship

Supported decision-making plans, whether formal or informal, may be presented to a probate court as a nonrestrictive alternative to guardianship under existing law that requires a probate court to consider less restrictive alternatives when guardianship has been requested.¹⁶

Execution of a supported decision-making plan is not evidence of incapacity and cannot be considered as such.¹⁷ The principal retains the ability to act independently of the plan and supporters, including when seeking personal information without assistance. The principal's choice to do so is not evidence of incapacity and cannot be used as such.¹⁸

Department of Developmental Disabilities duties

The bill requires the Ohio Department of Developmental Disabilities to create a model written supported decision-making plan that can be used by a principal and one or more supporters.

Additionally, the Department must create informational materials about formal and informal supported decision-making plans intended for use by (1) adults with developmental disabilities, (2) their family members, (3) professionals likely to encounter supported decision-making plans, including social, medical, and financial service professionals, and (4) the general public.¹⁹

HISTORY

Action	Date
Introduced	01-17-24

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¹⁵ R.C. 5123.685.

¹⁶ R.C. 5123.681(F) and 2111.02(C)(5), not in the bill.

¹⁷ R.C. 5123.681(D).

¹⁸ R.C. 5123.681(E) and 5123.684(B)(3).

¹⁹ R.C. 5123.682(B).