

1 AN ACT related to supported decision making.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 8 of this Act, unless the context requires otherwise:*

6 *(1) "Adult" means an individual who is eighteen (18) years of age or older;*

7 *(2) "Affairs" means personal, health care, and financial matters arising in the*
8 *course of activities of daily living and includes all of the following:*

9 *(a) Those health care and personal affairs in which an adult makes his or her*
10 *own health care decisions, including monitoring his or her own health;*
11 *obtaining, scheduling, and coordinating health and support services;*
12 *understanding health care information and options; and making personal*
13 *decisions, including those to provide for his or her own care and comfort;*

14 *(b) Those financial affairs in which an adult manages his or her income and*
15 *assets and its use for clothing, support, care, comfort, education, shelter,*
16 *and payment of other liabilities of the adult;*

17 *(3) "Cabinet" means the Cabinet for Health and Family Services;*

18 *(4) "Good faith" means honesty in fact and the observance of reasonable standards*
19 *of fair dealing;*

20 *(5) "Health care facility" means any institution, place, building, agency, or portion*
21 *thereof, public or private, whether organized for profit or not, used, operated, or*
22 *designed to provide medical diagnosis, treatment, nursing, rehabilitative, or*
23 *preventive care, and licensed pursuant to KRS Chapter 216B;*

24 *(6) "Health care provider" means any health care facility or provider of health*
25 *services, including but not limited to, those licensed, certified, or regulated under*
26 *KRS Chapters 211, 216, , 216A, 216B, 311, 312, 313, or 314;*

27 *(7) "Immediate family member" means a legal spouse, child, sibling, parent,*

- 1 grandparent, grandchild, stepparent, stepchild, or stepsibling;
- 2 (8) "Person" means an adult; health-care institution; health-care provider;
- 3 corporation; partnership; limited liability company; association; joint venture;
- 4 government; governmental subdivision, agency, or instrumentality; public
- 5 corporation; or any other legal or commercial entity;
- 6 (9) "Principal" means an adult who seeks to enter, or has entered, into a supported
- 7 decision-making agreement with a supporter under this chapter;
- 8 (10) "Supported decision-making agreement" or "the agreement" means an
- 9 agreement between a principal and a supporter entered into under Sections 1 to 8
- 10 of this Act;
- 11 (11) "Supporter" means a person who is named in a supported decision-making
- 12 agreement and is not prohibited from acting under Sections 1 to 8 of this Act;
- 13 and
- 14 (12) "Support services" means a coordinated system of social and other services
- 15 supplied by private, state, institutional, or community providers designed to help
- 16 maintain the independence of an adult, including the following:
- 17 (a) Homemaker-type services, including house repair, home cleaning, laundry,
- 18 shopping, and meal-provision;
- 19 (b) Companion-type services, including transportation, escort, and facilitation
- 20 of written, oral, and electronic communication;
- 21 (c) Visiting nurse and attendant care;
- 22 (d) Health-care provider;
- 23 (e) Physical and psychosocial assessments;
- 24 (f) Financial assessments and advisement on banking, taxes, loans,
- 25 investments, and management of real property;
- 26 (g) Legal assessments and advisement;
- 27 (h) Education and educational assessment and advisement;

1 (i) Hands-on treatment or care, including assistance with activities of daily
 2 living such as bathing, dressing, eating, range of motion, toileting,
 3 transferring, and ambulation;

4 (j) Care planning; or

5 (k) Other services needed to maintain the independence of an adult.

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
 7 READ AS FOLLOWS:

8 (1) All adults are presumed to be capable of managing their affairs and to have
 9 capacity unless otherwise determined by a court.

10 (2) The manner in which an adult communicates with others is not grounds for
 11 deciding that the adult is incapable of managing the adult's affairs.

12 (3) Execution of a supported decision-making agreement may not be used as
 13 evidence of incapacity and does not preclude the ability of the adult who has
 14 entered into such an agreement to act independently of the agreement.

15 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) An adult may enter into a supported decision-making agreement if the following
 18 apply:

19 (a) The adult enters into the agreement voluntarily and without coercion or
 20 undue influence; and

21 (b) The adult understands the nature and effect of the agreement.

22 (2) A supported decision-making agreement must include the following:

23 (a) Designation of at least one (1) supporter;

24 (b) The types of decisions for which the supporter is authorized to assist; and

25 (c) The types of decisions, if any, for which the supporter may not assist.

26 (3) A supported decision-making agreement may include any of the following:

27 (a) Designation of more than one (1) supporter;

- 1 (b) Provision for an alternate to act in the place of a supporter in such
2 circumstances as may be specified in the agreement; or
- 3 (c) Authorization for a supporter to share information with any other supporter
4 named in the agreement, as a supporter believes is necessary.
- 5 (4) A supported decision-making agreement is valid only if the following occur:
- 6 (a) The agreement is in a writing that contains the elements of the supported
7 decision making form developed by the cabinet;
- 8 (b) The agreement is dated; and
- 9 (c) Each party to the agreement signed the agreement in the presence of two (2)
10 adult witnesses.
- 11 (5) The two (2) adult witnesses required by subsection (4) of this section may not be
12 any of the following:
- 13 (a) A supporter for the principal;
- 14 (b) An employee or agent of a supporter named in the supported decision-
15 making agreement; or
- 16 (c) Any person who does not understand the type of communication the
17 principal uses, unless an individual who understands the principal's means
18 of communication is present to assist during the execution of the supported
19 decision-making agreement.
- 20 (6) A supported decision-making agreement must contain a separate declaration
21 signed by each supporter named in the agreement indicating the following:
- 22 (a) The supporter's relationship to the principal;
- 23 (b) The supporter's willingness to act as a supporter; and
- 24 (c) The supporter's acknowledgement of the duties of a supporter under this
25 chapter.
- 26 (7) A supported decision-making agreement may authorize a supporter to assist the
27 principal to decide whether to give or refuse consent to care.

1 (8) A principal or a supporter may revoke a supported decision-making agreement at
2 any time in writing and with notice to the other parties to the agreement.

3 (9) An authorization in a supported decision-making agreement may be prospectively
4 limited or abrogated, in whole or part, by a judicial determination that the
5 principal lacks the capacity to engage in the making of specific decisions covered
6 by the agreement, despite the assistance of a supporter.

7 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
8 READ AS FOLLOWS:

9 (1) Except as otherwise provided by a supported decision-making agreement, a
10 supporter may do the following:

11 (a) Assist the principal in understanding information, options, responsibilities,
12 and consequences of the principal's life decisions, including those decisions
13 relating to the principal's affairs or support services;

14 (b) Help the principal access, obtain, and understand any information that is
15 relevant to any given life decision, including medical, psychological,
16 financial, or educational decisions, or any treatment records or records
17 necessary to manage the principal's affairs or support services;

18 (c) Assist the principal in finding, obtaining, making appointments for, and
19 implementing the principal's support services or plans for support services;

20 (d) Help the principal monitor information about the principal's affairs or
21 support services, including keeping track of future necessary or
22 recommended services; and

23 (e) Ascertain the wishes and decisions of the principal, assist in communicating
24 those wishes and decisions to other persons, and advocate to ensure that the
25 wishes and decisions of the principal are implemented.

26 (2) Except as permitted by administrative regulations promulgated under Section 8
27 of this Act, the following are disqualified from acting as a supporter:

1 (a) A person who is an employer or employee of the principal, unless the person
2 is an immediate family member of the principal;

3 (b) A person directly providing paid support services to the principal, with the
4 exception of supported decision-making services, unless the person is an
5 immediate family member of the principal; or

6 (c) An individual against whom the principal has obtained an order of
7 protection from abuse or an individual who is the subject of a civil or
8 criminal order prohibiting contact with the principal.

9 (3) A supporter is prohibited from doing the following:

10 (a) Exerting undue influence upon, or making decisions on behalf of, the
11 principal;

12 (b) Obtaining, without the consent of the principal, information that is not
13 reasonably related to matters with which the supporter is authorized to
14 assist under the supported decision-making agreement; and

15 (c) Using, without the consent of the principal, information acquired for a
16 purpose other than assisting the principal to make a decision under the
17 supported decision-making agreement.

18 (4) A supporter shall act with the care, competence, and diligence ordinarily
19 exercised by individuals in similar circumstances, with due regard either to the
20 possession of, or lack of, special skills or expertise.

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
22 READ AS FOLLOWS:

23 A decision or request made or communicated with the assistance of a supporter in
24 conformity with this chapter shall be recognized for the purposes of any provision of
25 law as the decision or request of the principal and may be enforced by the principal or
26 supporter in law or equity on the same basis as a decision or request of the principal.

27 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO

1 READ AS FOLLOWS:

2 A person who in good faith acts in reliance on an authorization in a supported
 3 decision-making agreement, or who in good faith declines to honor an authorization in
 4 a supported decision-making agreement, is not subject to civil or criminal liability or to
 5 discipline for unprofessional conduct for the following:

6 (1) Complying with an authorization in a supported decision-making agreement
 7 based on an assumption that the underlying supported decision-making
 8 agreement was valid when made and has not been revoked or abrogated under
 9 Section 3 of this Act;

10 (2) Declining to comply with an authorization in a supported decision-making
 11 agreement based on actual knowledge that the agreement is invalid or has been
 12 revoked or abrogated under Section 3 of this Act ; or

13 (3) Declining to comply with an authorization related to health care in a supported
 14 decision-making agreement because the action proposed to be taken under the
 15 agreement is contrary to the conscience or good faith medical judgment of the
 16 person or to a written policy of a health-care institution that is based on reasons
 17 of conscience.

18 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) A supporter may assist the principal with obtaining any information to which the
 21 principal is entitled, including, with a signed and dated specific consent, protected
 22 health information under the Health Insurance Portability and Accountability
 23 Act of 1996, P. L. 104-191 or educational records under the Family Educational
 24 Rights and Privacy Act of 1974, 20 U.S.C. sec. 1232g.

25 (2) The supporter shall ensure all information collected on behalf of the principal
 26 under this section is kept privileged and confidential, as applicable; is not subject
 27 to unauthorized access, use, or disclosure; and is properly disposed of when

1 appropriate.

2 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO
3 READ AS FOLLOWS:

4 *The secretary of the Cabinet for Health and Family Services shall promulgate*
5 *administrative regulations necessary to implement Sections 1 to 8 of this Act.*