



February 5, 2019

To: Sen. Prozanski, Chair, Senate Committee on Judiciary, and Committee Members

From: Leslie Sutton, Oregon Developmental Disabilities Coalition

RE: SB 681 – Supported decision-making

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Sen. Prozanski and Members of the Committee:

The Oregon Developmental Disabilities Coalition (DD Coalition) is a group of approximately 36 organizations across Oregon that promote quality services, equality and community integration for Oregonians with intellectual and developmental disabilities (IDD) and their families. We also have individual members who are self-advocates and family members.

The DD Coalition envisions an Oregon where people with disabilities have choice and control over their lives. We also recognize that sometimes people with disabilities need decision-making support to meet their goals and remain healthy, safe and free from exploitation. In these cases, a supported decision-making arrangement with a trusted person can be a useful way to for the person experiencing disability to get help making decisions, without giving up their rights.

Supported decision-making can positively impact the health and well-being of Oregonians experiencing disability because exercising decision making skills leads to greater self-determination and the opportunity to control things in life that are important. People with greater self-determination are healthier, more independent, better able to recognize and resist abuse, and have greater psychological health. <sup>1</sup>

While we absolutely support the establishment of supported decision-making in Oregon law, we believe the idea merits further discussion with stakeholders, and SB681 needs additional refinement.

We strongly support Section 2 of SB 681 because it requires Oregon to recognize supported decision-making as a less restrictive alternative to appointing a fiduciary and directs that supported decision-making must be explored before initiating a protective proceeding. Appointing a guardian is a serious matter – and has significant, long-term consequences for the person and their rights. Requiring that a person be given the chance to try less restrictive alternatives before taking away a person’s rights through guardianship is absolutely appropriate and fair. Section 2 follows similar language in statutes adopted in other states, the Uniform

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<sup>1</sup> Wehmeyer, Palmer, Rifenshank, & Little 2014; Powers et al., 2012; Khemka, Hickson & Reynolds 2005; Wehmeyer & Palmer, 2003; Shogren, Wehmeyer & Shwartz, 1997 & 1998; Wehmeyer, Kelchner, & Reynolds 1996)



Guardianship, Conservatorship and Other Protective Arrangements Act, and the American Bar Association House of Delegates resolution on Supported decision-making.

People should be allowed to enter into supported decision agreements without fear that it will somehow be used against them in the future. We support Section 3, which does not recognize the execution of a supported decision-making agreement as evidence of incapacity and allows the person to act independently of the agreement.

We also strongly support Section 17 which requires school districts to give students and parents information about Supported decision-making and other alternatives to guardianship with strategies for parents to remain involved in their child's education.

When youth turn 18, including students with disabilities, their educational rights transfer from the parents to the young adult. Too often, we hear that families feel their only option is to file for guardianship in order to continue to support their student in making decisions about school. Yet, a guardianship most often will remain for the person's entire life, and goes well beyond educational decisions. Requiring information about supported decision-making and other alternatives to guardianship as part of the Notice of Transfer of Rights will help families explore other forms of less restrictive assisted and supported decision-making so they can feel better prepared when their child turns 18.

We feel that other parts of the bill need more work and discussion to truly create a supported decision-making structure that works for Oregonians experiencing disability. For example, the form is overly complex to be of much use to the people who need it. We would also like to have further discussion about how to address conflicts of interest, particularly around if a potential supporter is already in a paid support capacity in the person's life, such as a residential or employment provider.

Finally, we would like more discussion about if public or private entities can be paid as supporters. Supported decision-making is about using a person who you know and trust to help you understand choices, make decisions and communicate those decisions. To be effective, the supporter must know the person very well. We question whether someone working in a role as a paid supporter for many customers would know the person well enough to fill this role appropriately.

Oregon has a thoughtful guardianship statute. We owe it to people experiencing disabilities to have a complete and effective supported decision-making statute as well. This can be accomplished with more discussion about these complex situations.