AN ACT related to supported decision making.

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

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

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

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

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

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

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

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

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

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

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

(7) "Immediate family member" means a legal spouse, child, sibling, parent,
grandparent, grandchild, stepparent, stepchild, or stepsibling;

(8) "Person" means an adult; health-care institution; health-care provider; corporation; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(9) "Principal" means an adult who seeks to enter, or has entered, into a supported decision-making agreement with a supporter under this chapter;

(10) "Supported decision-making agreement" or "the agreement" means an agreement between a principal and a supporter entered into under Sections 1 to 8 of this Act;

(11) "Supporter" means a person who is named in a supported decision-making agreement and is not prohibited from acting under Sections 1 to 8 of this Act; and

(12) "Support services" means a coordinated system of social and other services supplied by private, state, institutional, or community providers designed to help maintain the independence of an adult, including the following:

(a) Homemaker-type services, including house repair, home cleaning, laundry, shopping, and meal-provision;

(b) Companion-type services, including transportation, escort, and facilitation of written, oral, and electronic communication;

(c) Visiting nurse and attendant care;

(d) Health-care provider;

(e) Physical and psychosocial assessments;

(f) Financial assessments and advisement on banking, taxes, loans, investments, and management of real property;

(g) Legal assessments and advisement;

(h) Education and educational assessment and advisement;
(i) Hands-on treatment or care, including assistance with activities of daily
living such as bathing, dressing, eating, range of motion, toileting,
transferring, and ambulation;

(j) Care planning; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Designation of more than one (1) supporter;
(b) Provision for an alternate to act in the place of a supporter in such circumstances as may be specified in the agreement; and

(c) Authorization for a supporter to share information with any other supporter named in the agreement, as a supporter believes is necessary.

(4) A supported decision-making agreement is valid only if the following occur:

(a) The agreement is in a writing that contains the elements of the supported decision making form developed by the cabinet;

(b) The agreement is dated; and

(c) Each party to the agreement signed the agreement in the presence of two (2) adult witnesses.

(5) The two (2) adult witnesses required by subsection (4) of this section may not be any of the following:

(a) A supporter for the principal;

(b) An employee or agent of a supporter named in the supported decision-making agreement; or

(c) Any person who does not understand the type of communication the principal uses, unless an individual who understands the principal’s means of communication is present to assist during the execution of the supported decision-making agreement.

(6) A supported decision-making agreement must contain a separate declaration signed by each supporter named in the agreement indicating the following:

(a) The supporter's relationship to the principal;

(b) The supporter's willingness to act as a supporter; and

(c) The supporter's acknowledgement of the duties of a supporter under this chapter.

(7) A supported decision-making agreement may authorize a supporter to assist the principal to decide whether to give or refuse consent to care.
(8) A principal or a supporter may revoke a supported decision-making agreement at any time in writing and with notice to the other parties to the agreement.

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

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

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

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

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

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

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

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

(2) Except as permitted by administrative regulations promulgated under Section 8 of this Act, the following are disqualified from acting as a supporter:
(a) A person who is an employer or employee of the principal, unless the person is an immediate family member of the principal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The supporter shall ensure all information collected on behalf of the principal under this section is kept privileged and confidential, as applicable; is not subject to unauthorized access, use, or disclosure; and is properly disposed of when
SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

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