

Conservatorship – Effective January 1, 2023

AB 1663 (Maienschein) Chapter 894, Statutes of 2022

Prepared for CALA Members October 2022

*DSS Implementation Plan pending

Why was this bill introduced?

This bill was introduced to add a supported decision-making process to statute as a less-restrictive alternative to probate conservatorships, to make conservatorships the last resort, and to make it easier to end conservatorships. It was primarily a response to the Britney Spears conservatorship.

What was CALA's position?

CALA did not take a support or oppose position on the bill but instead focused on studying the details of the initial bill and subsequent amendments to assess the potential impact on providers and residents. CALA was initially concerned that the bill did not fully recognize the progressive nature of Alzheimer's disease and dementia, potentially leading to more conservatorship of residents, and that the initial informal supported decision-making process could lead to fraud and abuse of residents. Multiple conversations with other stakeholders, including CALA legal counsel and the Alzheimer's Association, led to resolution of potential problems.

How does this bill solve the problem?

AB 1663 adds a supported decision-making process into statute, which allows individuals with a disability to enter into formal supported decision-making agreements with one or more adults to help make life decisions based on the individuals' preferences. The bill also implements protections for individuals with a disability against potential abuse by a supporter.

What do RCFEs need to know?

While there may be few, if any, specific actions required on the part of the RCFE regarding the new process of supported decision-making, you should familiarize yourself with the specifics as you may begin to see them from current or prospective residents. Seek legal counsel if you encounter confusion with supporters or others involved. Here is an overview of the supported decision-making process:

- Supported decision-making agreements are formal agreements entered into voluntarily between **one or more adults** and may include images, be read aloud, or be video or audio recorded, in addition to the written version. The agreement may be revoked orally or in writing at any time by either party.
- Supported decision-making is a process of supporting and accommodating an adult with a disability to enable them to make life decisions (including medical, financial, living arrangement, access to home and community-based services, social, and sexual decisions, among others) without impeding the self-determination of the adult.
 - Adults with disabilities, including older adults with disabilities—age-related disability, cognitive disability, dementia, cognitive impairment, Alzheimer's disease, and major neurocognitive disorder—are presumed competent, **as the law currently recognizes**, and to have the capacity to make decisions regarding their day-to-day health, safety, welfare, and social and financial affairs, unless otherwise determined through legal proceedings.
- An adult with a supported decision-making agreement can act independently of an agreement, and the agreement cannot be used by a court or other entity as evidence of incapacity.
- An adult with a disability has a right to have one or more other adults, including supporters, present in any meeting or discussion and included in any written communication. These meetings include, but are not limited to, individual planning meetings required by law, service and care planning meetings,

discharge planning meetings, meetings with individuals who provide residential services or long-term services and supports, and meetings with financial planners and institutions.

- The adult with a disability may communicate the preference to have others present or included through oral statements, gestures, or any augmentative or alternative communication method used by the adult with a disability.
- A third party may only refuse the presence of additional individuals, including supporters, if the party reasonably believes there is fraud, coercion, abuse, or other action by the individuals requested to be included that the third party is mandated to report.
- A supported decision-making agreement:
 - Must be written in plain language accessible to the adult with the disability and include, but not be limited to, all of the following:
 - A list of the areas in which the adult with a disability requests support.
 - A list of the areas in which the supporter agrees to provide the support.
 - The supporter's agreement that they meet each of the specified requirements.
 - Information advising the adult with a disability about their right to file a report under the Elder Abuse and Dependent Adult Civil Protection Act.
 - Information and copies of other supported or substituted decision-making documents the adult with a disability has in place, including, but not limited to, powers of attorney, authorizations to share medical or educational information, authorized representative forms, or representative payee agreements.
 - Must be signed by the adult with a disability and each supporter, in the presence of two or more attesting and disinterested witnesses who are at least 18 years of age, or a notary public. The adult with a disability may use reasonable modifications, such as assistive technology or physical assistance, to sign the agreement.
 - Should be reviewed by all supporters and the adult with a disability every two years and updated as needed; if updated, it must be signed as required.
- A supported decision-making agreement is effective until it is terminated in one of the following ways:
 - By the adult with a disability.
 - By all supporters.
 - By the terms of the agreement.
 - By the death of the adult with a disability.
 - If all supporters are no longer eligible to serve pursuant to stated prohibitions and qualifications.
- Individuals are not eligible to serve as supporters if:
 - The adult with a disability has previously accused them of abuse or neglect; or
 - The adult with a disability has obtained a protection or restraining order against them; or
 - The supporter is found criminally, civilly, or administratively liable for abuse, neglect, mistreatment, coercion, or fraud.
- Any party may choose to terminate their own participation in the agreement at any time by providing written or oral notice of the termination to all parties to the agreement. The adult with a disability may terminate the agreement by other conduct intended to communicate termination, including by defacing, tearing, or destroying the agreement or directing another to destroy the agreement in their presence.
- A supporter's role is to:
 - Help the adult with a disability obtain and understand information related to a life decision, communicating the decision to others, and assisting the individual to ensure their preferences and decisions are honored.
 - Respect the values, beliefs, and preferences of the adult with a disability.
 - Act honestly, diligently, and in good faith.
 - Act within the scope identified by the adult with a disability.
 - Maintain confidentiality of any information obtained by a supporter, unless the adult with a disability specifically authorizes its disclosure.

- A supporter may not coerce an adult with a disability and may not make decisions for, or on behalf of, the adult with a disability or sign documents on their behalf unless the supporter has a valid legal authorization to do so (for example, under a durable power of attorney) and the action is within their scope of authority under that valid legal authorization.
- A supporter is prohibited from the following:
 - Obtaining information not reasonably related to matters with which the adult with a disability has requested assistance;
 - Using or disclosing information for any purpose other than supporting the adult with a disability; and
 - Participating in any life decision in which they have a conflict of interest, including, but not limited to, any decision in which the supporter has a financial or other tangible stake in the outcome.