

# FROM THE CAPITOL



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**2024  
FDDC CAPITOL UPDATES**



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## January 19, 2024, Volume 24, Issue 2

### Supported Decision-Making 2024

This session, Representative Tant and Senator Simon have filed companion bills for supported decision-making authority in Florida! [HB 73](#) and [SB 446](#) respectively. This year, these bills have support from the Florida Bar and disability advocates, and we are hopeful that after several years, the bill will pass.

The Council supports meaningful alternatives to full guardianship and guardian advocacy. Supported decision-making (SDM) can be explored when guardianships are considered. Some of the more restrictive forms of guardianship, while necessary for some individuals, can be considered a last resort after less restrictive options are explored.

SDM is an alternative to guardianship that allows people with disabilities to make their own decisions with the support of people they trust. It is a unique tool proven successful in 14 states and D.C., that will further the Florida Legislature's intent to ensure guardianship is only imposed when there is no less restrictive alternative.

Regardless of a person's legal status (even for individuals under guardian advocacy or full guardianships), the person with a disability should be meaningfully involved in making decisions about their life and their wishes and preferences should be followed to the greatest extent possible.

Parents of children with disabilities are often told they need to seek guardianship as soon as their child turns 18. Meanwhile, the Florida law states that you cannot put someone under guardianship if there is a “less restrictive” alternative, but the law does not offer a meaningful alternative. Judges and families need more information and options.

The highlights of this proposed legislation include:

- requiring the court to consider the needs and abilities of persons with a developmental disability when determining whether to appoint a guardian advocate or a guardian,
- creating a new type of power of attorney, termed a supported decision-making agreement (SDM agreement). The “supporter” in an SDM agreement would provide information, recommendations, and assistance to the eligible individual in making decisions and exercising his or her rights, but the supporter does not have any authority to make any binding decisions for or on behalf of the individual. The SDM agreement limits the supporter’s authority to only be able to obtain information on behalf of the individual and assist the individual in communicating with third parties,
- requiring the court to address why a less restrictive level of care was not selected instead of a more restrictive choice, and
- adding SDM agreements to the list of alternative methods for parental involvement in educational decision-making, which an IEP team must share with the parent during the process of developing a transition plan for a student with a disability.

**Below are bills the Council is supporting or tracking. Please click on bill links to track a bill’s full journey through the process to date.**

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## **Important Bills to Watch**

### **[HB 73 - Supported Decision-making Authority by Koster, Tant](#)**

#### **Summary**

This bill requires the court to consider the needs and abilities of persons with a developmental disability when determining whether to appoint a guardian advocate or a guardianship. The bill creates a new type of power of attorney, termed a supported decision-making agreement (SDM agreement). The “supporter” in an SDM agreement would provide information, recommendations, and assistance to the eligible individual in making decisions and exercising his or her rights, but the supporter does not have any authority to make any binding decisions for or on behalf of the individual. The SDM agreement limits the supporter’s authority to only be able to obtain information on behalf of the principal, and assist the principal in communicating with third parties, including conveying the principal's communications, decisions, and directions to third parties on behalf of the principal.

HB 73 also permits the examining committee {when capacity is in question}, which determines incapacity, to allow a person to assist with communication with the individual with a disability when requested by the court-appointed

counsel for the alleged incapacitated person.

The final order addressing the level of guardianship or decision-making option selected must address why a less restrictive level of care was not selected instead of a more restrictive choice.

The bill adds SDM agreements to the list of alternative methods for parental involvement in educational decision making which an IEP team must share with parent during the process developing a transition plan for a student with a disability. **The Council is supporting this bill.**

#### **Identical Bill**

[SB 0446 - Supported Decision-making Authority by Simon](#)

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#### [SB 212 - Medicaid Buy-In by Gruters](#)

##### **Summary**

The bill would require the Agency for Health Care Administration to establish and implement a Medicaid buy-in program for individuals with disabilities who are 18 to 64 years of age and whose incomes exceed the maximum income eligibility level for initial enrollment to obtain coverage for medical assistance under the Medicaid program. The Medicaid buy-in program must provide full Medicaid benefits to eligible individuals and limit any premiums or cost sharing to a certain percentage of an individual's income, as determined by the agency and requires the agency to seek federal waiver approval or submit any necessary state plan amendments by October 2024.

**The Council is supporting this bill.**

#### **Similar Bill**

[HB 0567 - Medicaid Expansion through Medicaid Buy-in Program by Joseph](#)

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#### [HB 313 - Transparency for autism-related services by Plascencia](#)

##### **Summary**

The bill defines "manifests" and "onset" to mean the display or disclosure of characteristic signs or symptoms of an illness for use in determining Autism Spectrum Disorders and eligibility in general for the iBudget waiver.

The bill would direct the agency or its designee to notify each applicant, in writing, of its individualized eligibility determination, including any specific criteria the applicant has not met from the agency's eligibility criteria described in rule. **The Council is supporting this bill.**

#### **Identical Bill**

[SB 0550 - Transparency for Autism-related Services by Rouson](#)

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#### [SB 794 - Medicaid Managed Care Plan Performance Metrics by Harrell](#)

##### **Summary**

The bill would require Medicaid managed care plans to submit performance metrics monthly to the Agency for Health Care Administration. The bill would

also require the agency to contract to develop and display on its public website a dashboard containing these monthly performance metrics; and the bill would require the agency to create a quarterly report on the metrics obtained. **The Council is supporting this bill.**

### Similar Bill

[HB 783-Medicaid Managed Care Performance Metrics by Berfield](#)

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### [HB 77 - Recovery of Damages in Claims for Medical Negligence by Roach](#)

#### Summary

This bill removes a provision that prohibits parents of an adult child from recovering damages in medical negligence suits. Some parents of children with disabilities have lost children through possible medical negligence and the law currently offers no ability for parents to seek damages for their adult children even if they have disabilities. In addition to removing this provision, SB 446 and HB 129 add that damages can be sought for medical negligence of a resident living in a facility. SB 248 adds that such recoveries are contingent upon certain findings or determinations by the Agency for Health Care Administration or the Department of Health. **The Council is tracking these bills.**

#### Identical Bills

[SB 0310 - Recovery of Damages in Claims for Medical Negligence by Martin](#)

#### Similar Bills

[HB 0129 - Damages Recoverable in Wrongful Death Actions by Lopez \(J\)](#)

[SB 0248 - Medical Negligence by Yarborough](#)

[SB 0442 - Damages Recoverable in Wrongful Death Actions by Book](#)

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