

From: Harris T. Capps, Parent and Guardian

March 3rd, 2025

Subject: Testimony on SB 96, Regarding Supported Decision Making (SDM)

To: Chairman (Health Committee) Schmidt

I **Oppose** to this *previously failed SB 213* which has made its way into this bill. **HB 96 lines 86427-86585** and is pushing "Supported Decision Making (SDM)". Please eliminate it from this bill

This bill is **unnecessary and redundant**, as there is already federal and state law that meets the need. SDM as policy could result in a degradation of Ohio's guardianship system while providing more opportunities for frivolous lawsuits.

We currently have a provision in the Ohio Revised Code (5123-3-03 (3/20/2023)) that satisfies the need by requiring **Person-Centered Planning** (at the federal level called Individual Program Plan (IPP); This applies to all licensed residential facilities providing Long Term Services and Supports. The **Federal Rule**, issued by the Centers for Medicare & Medicaid Services (HHS/CMS) in 2014) requires an Individual Program Plan (IPP) for persons residing in **both** 1) Home and Community-Based Services settings and in 2) Intermediate Care Facilities. Additionally, for persons in "institutional care"/Intermediate Care Facilities (ICF) - All services including health care services and nutrition are part of the Active Treatment (AT), which is based on an evaluation and individualized program plan (IPP) by an **interdisciplinary team**.

This initiative is currently being championed by APSI (Ohio's organization that provides guardian services for persons with developmental services who have been adjudicated to lack capacity. This initiative has also been pushed by Disability Rights Ohio (DRO). As you may know, in April 2023, a State of Ohio Joint Committee recommended DRO be fired. In DRO's November 2022 testimony, DRO indicated it has unfettered access to all individuals (with IDD). DRO and APSI's common goal of formalizing Supported Decision-making (SDM) can lead to persons with developmental disabilities being steered away from a guardianship adjudication of "lacking capacity" and therefore eligible for guardianship. This appears to be a way of intercepting those very vulnerable individuals needing a guardian and leading to them to not only fend for themselves but not represent a threat to DRO, et al.

Summary:

a) Required planning processes are already in place, and are required as a part of active treatment by Medicaid. Another planning process would unnecessarily add to the already heavy administrative burdens of many organizations. This would be in opposition our country's current political atmosphere to eliminate waste.

c) The current bill has numerous pitfalls like the potential to allow fraud on the part of the person supporting the disabled principal. DRO said (in its Nov 2022 testimony to the Joint Committee to examine DRO) that it had unfettered access to all persons with IDD (regardless of their capacity to make decisions, or the fact that they have a guardian).

d) HB 96 (SDM portion) while not directly applicable to persons with guardians, has the likelihood of weakening the legitimate system of guardianship. Most literature on Supported Decision Making starts out with the assumption that all persons with Intellectual and Developmental Disabilities (IDD) have the capacity to make decisions in their best interest. If this were so, there would be no need for guardians. However, Ohio spends approximately \$7.5 million (via ASPI) to provide surrogates (paid Guardians) to ensure the wellbeing of persons, mainly with severe-to-profound IDD. Moreover, in a recent ASPI report, they took pride in eliminating the need for guardianship for 8 people (of 3,175 wards, or ¼ of 1 percent). This demonstrates that this population largely lacks the capacity to make decisions in their best interest.

The **American Bar Association** has noted possible **challenges** to SDM as: 1) Risk of undue influence 2) Risk of abuse, neglect, exploitation. 3) Lack of understanding of person's medical/mental health needs 4) Lack of stability, or cognitive limitations of supporters, and 5) Disputes with family members.

Any *Future* SDM language should be limited to higher functioning persons who have capacity to make decisions.