October 13, 2025

Ohio Senate Judiciary Committee
One Capital Square
Columbus, Ohio 43215

Re: Amendments to SB 35

Dear Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and Members of the Committee,

On October 8, 2025, the Judiciary Committee accepted amendments to S.B. 35. Unfortunately, the amendments do not address concerns raised in public testimony. Please see below.

1. **Amendment requiring a supported decision making (SDM) plan to be created with "informed consent."** Informed consent is a term connected to health care decision-making whereby a patient has the right to receive information from his/her doctor about the nature, purpose, and risks of a procedure before giving consent for treatment.[1] Informed consent is an inapt term in the context of SB 35 for two reasons:

    a. Sub. S.B. 35 does not identify a party responsible for providing information to the adult with DD about the nature and risks of the SDM agreement before signing the agreement, as a doctor does for a patient seeking medical treatment. How then is the adult with DD to act with informed consent?

    b. Informed consent requires the person providing consent to be competent.[2] SB 35 presumes all adults with a developmental disability are competent unless determined otherwise by a probate court. However, in Ohio, there are likely thousands of adults with DD, many of whom have severe or profound intellectual disability (i.e., mental retardation), who have not undergone a competency determination in probate court because a guardianship application was not filed for them. SB 35 glosses over this fact leaving these individuals at risk of entering a SDM agreement they do not have the capacity to understand.[3]

2. **Amendment requiring a SDM plan to be a signed writing.** A signed writing adds protections, but SB 35's drafters made an additional amendment that at least partially negates the beneficial impact of a signed writing. In Sec. 5123.681(E), the drafters lowered the evidence required to prove the existence of SDM as a least restrictive alternative to guardianship. The previous version of S.B. 35 provided that evidence of a "SDM **plan**" (i.e., agreement) may be presented to a probate court as proof of a least restrictive alternative to guardianship. Sub. S.B. 35 only requires "evidence that an adult with developmental disability uses **'supported decision-making,'**" which includes a

[1] See R.C. 2317.54(A).
[2] R.C. 2317.54(C).
[3] Ohio law governing powers of attorney protects principals by requiring they are competent prior to creating a power of attorney. See e.g., R.C. 1337.12(A)(1).

formal signed writing or just evidence the adult with DD informally asks others for help with decisions. In other words, evidence of a formal, signed SDM agreement is not required to prove the existence of a least restrictive alternative to guardianship. The amendment to Sec. 5123.681(E) effectively lowers the bar to contest the appointment of a guardian or challenge an existing guardianship.

Given the problems with these amendments, assurances made in APSI, Inc.'s written testimony of October 8, 2025, that Sub. S.B. 35 does not "impinge on the authority of guardians" or "affect Ohio's current guardianship process in any way" are misleading. Additionally, the amendments do not alleviate the overriding concern—that Sub. S.B. 35 creates a pathway for many adults with DD to enter into a legal contract they do not understand and that exposes them to the risk of abuse and undue influence.

Ohio law should provide adults with developmental disabilities the same protections all other Ohio citizens have when appointing others to assist with decision making, such as appointing a power of attorney. I urge you to oppose Sub. Bill S.B. 35.

Sincerely,

Caroline A. Lahrmann