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Assemblymember Mark Stone
Chair, Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, California 95814

March 8, 2022

Re: OPPOSITION to AB1663 (Maienschein) The Probate Conservatorship Reform and Supported Decision-Making Act

Dear Chair Stone:

National Council on Severe Autism (NCSA) is a respected national organization based in California and supported by a strong following throughout the state. This morning we received the amended version of AB1663 and wish to thank the author and sponsors for addressing many of the shortcomings of the original bill. However, several significant and serious concerns remain, and should be addressed in further amendments, as follows:

Section 1836(d)(1) (1) should be amended to read:

Any person who contacts a superior court self-help center by telephone, email, or in person to inquire about conservatorship proceedings or to request documents to petition for a conservatorship shall be ~~directed to contact~~ **informed about** the conservatorship alternatives program.

The vast majority of conservatorship petitions involve cases for which conservatorship is indeed the appropriate legal tool, owing to the nature and extent of mental disability of the potential conservatee. There is no reason to waste the time of each and every person seeking self-help to contact the alternatives program, when in most cases it is inappropriate. While informing the persons of alternatives is not burdensome, requiring that they contact the the program certainly would add needless complexity to an already complex system.

Section 2113 should be amended to read:

A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate. To the greatest extent possible, the conservator, on a regular basis, shall inform the conservatee of decisions made on their behalf. In determining the desires of the conservatee, the conservator shall consider stated or previously expressed preferences, including preferences expressed by speech, sign language, **evidence-based** alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication.

It is imperative to include the term "evidence-based" before alternative and augmentive communication owing to the history of fraud involving "facilitated communication," a discredited form of alternative communication that unfortunately remains popular among proponents of supported decision-making. See <https://www.ncsautism.org/position-statement-fc>.

Section 3950 (d) should be amended to read:

The capacity of any adult should be assessed **based on evidence-based methods found in standard clinical practice** ~~with any supports, including supported decisionmaking, that the person is using or could use. The capacity of any adult should never be assessed in isolation from existing or possible supports.~~

The language of the amended bill opens the door to non-evidence-based methods, including reliance on other people's (supporters) abilities. It should go without saying that capacity must be assessed based on the independent actions and behaviors of the individual, with the use of evidence-based technology when appropriate.

Section 3952(b) must be stricken in its entirety.

~~Supported decisionmaking can take many forms and may be informal. An adult with a disability is not required to enter into a written supported decisionmaking agreement to participate in supported decisionmaking.~~

Under no circumstances should SDM be allowed to be informal or oral. Without a written document there is no way for supporters or third parties to understand the nature and scope of the agreement, and an abuser could easily cite an "informal SDM" in justifying an action (such as a sexual relation, or use of money or property) that harms the principal.

Section 3953(a) should be amended to read:

(a) Notwithstanding any other provision of this part, an adult with a disability may request, and is entitled to have present, **unless a third party suspects fraud or coercion**, one or more other adults, including supporters, in any meeting or communication, including, but not limited to, all of the following:

- (1) An individualized education plan (IEP) meeting.
- (2) An individual program plan (IPP) meeting.
- (3) A service planning meeting.
- (4) A care plan and hospital discharge planning meeting.
- (5) A financial planning meeting.
- (6) A communication or meeting with a bank or other financial institution.
- (7) An employment planning meeting.
- (8) A medical appointment.

We know of circumstances where paid caregivers have directed their charges to withdraw money from a bank, for the caregivers' benefit. In cases like these the third party, such as a banker, must retain the discretion to exclude a party it suspects may be taking advantage of the mentally compromised client. Adding this language will make this bill consistent with other state SDM laws.

Similarly, section 3953(b) should be amended to read:

When an adult with a disability indicates that they wish to have one or more other adults present in any meeting or communication, any entity or third party shall permit the other adult or adults to attend with the adult with a disability, **unless the third party suspects fraud or coercion**. An adult with a disability may indicate that they wish to have the other adult or adults to attend a meeting or communication through oral statement, gesture, or any **evidence-based** augmentative or alternative communication method used by the adult with a disability.

Section 3955(c) should be amended to read:

(c) A supported decisionmaking agreement shall be written in simple language that is accessible to the adult with a disability. It may ~~contain images or~~ be read out loud or be audio- or video-recorded. **The adult must understand the nature and effect of the agreement.**

This issue goes to the capacity of the principal. If the individuals lack language comprehension to the extent they cannot understand the words of an SDM agreement, then they do not satisfy the “sound mind” requirement of the California Civil Code governing contracts. Other states such as Delaware require that “The adult understands the nature and effect of the [SDM] agreement.” This language should be included in California law as well.

Section 3957 should be stricken.

~~Supported decisionmaking shall be encouraged and used, to the maximum extent possible, by adults with disabilities who are subject to conservatorship or other protective arrangements. To the greatest extent possible, conservators shall encourage and respect the preference of an adult with a disability under conservatorship to use supported decisionmaking within the conservatorship, or to rely on supported decisionmaking in seeking to terminate a conservatorship.~~

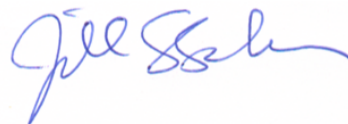
It is simply nonsensical and illogical to retain any requirement whatsoever that SDM be used within conservatorships. The law already requires conservators to consider the wishes of the conservatee.

Section 3958 (a) should be amended to read:

A person who receives the original or a copy of a supported decisionmaking agreement described in Section 3955 shall rely on the agreement and its authority as presented, **unless that person has cause to believe the decision is the result of fraud or coercion, or will result in significant harm to the disabled individual.**

Thank you for your consideration of our comments. We look forward to continuing to work with the author and sponsors to improve this bill.

Very truly yours,



Jill Escher
President