

Nevada's AB 128 (As Amended): A Model Bill on Medical Supported Decision Making is Available

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This is the third of several reviews of the amended version of AB 128 – a Nevada bill to create a medical decision making tool for use by people with intellectual disabilities. In the bill, a person has an intellectual disability if the condition occurred during the developmental stage and the person has an IQ of 70 or less.

Spectrum Institute submitted several reviews of the original version of AB 128, including a legal analysis, a clinical analysis, a response to testimony at the first committee hearing, and an analysis of potential liability to medical providers. Most of those concerns continue to apply to the amended version of AB 128.

Although we engage in critical analysis of policy proposals affecting people with intellectual and developmental disabilities, the process of creative thinking is also important to our work. We try to never criticize a proposal without offering potential solutions.

Applying constructive criticism to AB 128, we have something positive to offer. It is a newly released Model Bill on Medical Supported Decision Making Agreements. This model includes amendments to the original version – amendments that occurred as a result of our critical analysis of the original version and our suggestions as to how it could be improved.

When we first learned of the Model Bill, we raised several concerns about what was and what was not included in the model. Having raised those concerns, we developed a Framework for Medical Supported Decision Making Legislation – a template that identified several principles what would need to be included in order to minimize the risk of abuse or undue influence to people with intellectual and developmental disabilities.

When our criticisms and the framework came to the attention of the primary proponents of the Model Bill – the Autistic Self Advocacy Network (ASAN) – their leadership consulted with attorney Jonathan Martinis. Jonathan is the “legal guru” of supported decision making. Jonathan is the director of the National Resource Center on Supported Decision Making, a non-profit funded by the federal Administration on Intellectual and Developmental Disabilities.

Jonathan gained notoriety for representing Jenny Hatch in her now famous guardianship proceeding. With his help, she won the case which gave a big boost to the political movement for supported decision making.

Jonathan reached out to us to discuss how the Model Bill could be amended to incorporate the principles in our Framework. After a lengthy brainstorming session with Tom Coleman, the two attorneys reached a tentative agreement on language for an amended Model Bill. Jonathan discussed the new provisions with the leadership of ASAN. They agreed to amend the bill and a new Model Bill was drafted.

The [Model Bill](#) is available on the website of the Disability and Abuse Project. A link to the bill can be found on the “[What's New](#)” page of the website.

The Model Bill is exactly what its title suggests – a template for a Medical Supported Decision Making Agreement. It deals with all of the tough issues and addresses them in a responsible manner.

The proponents of the Model Bill acknowledge that guardianships, perhaps medical-only guardianships, may continue to be necessary for people who do not understand the terms used in the agreement. If they do not understand it, then the agreement is not for them. A guardianship may be necessary.

The Model Bill does not attempt to mix apples and oranges. It does not try to create a hybrid document that merges concepts that may be incompatible. It does not make legal soup out of distinct ingredients – supported decision making and a power of attorney (which is a form of substituted decision making).

We suggest that the Nevada Legislature may want to look at the Model Bill on Medical Supported Decision Making Agreements as an alternative to the original or amended versions of AB 128. If Nevada wants to be a national leader in developing an option to guardianship for medical decisions – an option that may be appropriate for some but not all adults with intellectual disabilities – legislators should consider the Model Bill. ♦♦

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