*** § 82.03 Presumption of capacity.**

(a) For the purposes of this article, every adult shall be presumed to have the capacity to enter into a supported decision-making agreement, unless that adult has a legal guardian, appointed by a court of competent jurisdiction, whose granted authority is in conflict with the proposed supported decision-making agreement. This presumption may be rebutted only by clear and convincing evidence.

(b) Capacity shall include capacity with decision-making support and/or accommodations.

(c) A diagnosis of a developmental or other disability or condition shall not constitute evidence of incapacity.

(d) The manner in which an adult communicates with others shall not constitute evidence of incapacity.

(e) Neither the execution of a supported decision-making agreement by an individual, nor the interest in or wish to execute a supported decision-making agreement by an individual, nor the failure of an individual to execute a supported decision-making agreement may be used or considered as evidence that the individual lacks capacity, or to deny the decision-maker benefits to which they are otherwise entitled, including adult protective services.

(f) A decision-maker may make and execute a supported decision-making agreement, if the decision-maker understands that they are making and executing an agreement with their chosen supporters and that they are doing so voluntarily.

* NB Effective 90 days from the date that the regulations issued in accordance with § 1 of chapter 481 of 2022 appear in the New York State Register or the date such regulations are adopted, whichever is later.