*** § 82.12 Limitations on liability.**

(a) Subdivisions (b), (c) and (d) of this section shall apply only to decisions made pursuant to supported decision-making agreements created in accordance with this article which are signed by a facilitator and following a recognized supported decision-making facilitation or education process, as prescribed by regulations governing the facilitation and education processes promulgated by the office for people with developmental disabilities.

(b) A person shall not be subject to criminal or civil liability and shall not be determined to have engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a decision made by a decision-maker pursuant to a duly executed supported decision-making agreement created in accordance with this article.

(c) Any health care provider that provides health care based on the consent of a decision-maker, given with support or assistance provided through a duly executed supported decision-making agreement created in accordance with this article, shall be immune from any action alleging that the decision-maker lacked capacity to provide informed consent, unless the entity, custodian, or organization had actual knowledge or notice that the decision-maker had revoked the supported decision-making agreement, or that the supporter had committed abuse, physical coercion, undue influence, or financial exploitation with respect to the decision to grant consent.

(d) Any public or private entity, custodian, or organization that discloses personal information about a decision-maker in reliance on the terms of a duly executed supported decision-making agreement created in accordance with this article, to a supporter authorized by the terms of the supported decision-making agreement to assist the decision-maker in accessing, collecting, or obtaining that information under subdivision (e) of section 82.05 of this article, shall be immune from any action alleging that it improperly or unlawfully disclosed such information to the supporter unless the entity, custodian, or organization had actual knowledge that the decision-maker had revoked such authorization.

(e) This section may not be construed to provide immunity from actions alleging that a health care provider, or other third party, has done any of the following:

1. caused personal injury as a result of a negligent, reckless, or intentional act;

2. acted inconsistently with the expressed wishes of a decision-maker;

3. failed to provide information to either decision-maker or their supporter that would be necessary for informed consent; or

4. otherwise acted inconsistently with applicable law.

(f) The existence or availability of a supported decision-making agreement does not relieve a health care provider, or other third party, of any legal obligation to provide services to individuals with disabilities, including the obligation to provide reasonable accommodations or auxiliary aids and services, including, but not limited to, interpretation services and communication supports to individuals with disabilities under the federal Americans with Disabilities Act (42 U.S.C. § 12101).

* 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.