

FAQ: Supported Decision Making

What is Supported Decision-Making?

"Supported Decision-Making" is a model that prevents unnecessary guardianship, allowing Individuals to make important life decisions and to stay in charge of their own lives. This is accomplished by utilizing "Supporters" who provide Individuals with assistance, so they may understand options, responsibilities and potential consequences of their decisions. Supporter(s) help obtain information relevant to the Individuals' decisions and help Individuals understand and communicate their decisions to the appropriate people.

"The Individual remains the "decision-maker."

How did Supported Decision-Making come to North Dakota?

After learning about the successful use of Supported Decision-Making in other states, ND leaders who work with older adults and Individuals with disabilities, discussed the importance of studying this model for possible implementation in ND.

The ND State Council on Developmental Disabilities (SCDD) awarded a grant to the Protection and Advocacy Project (P&A) , to coordinate the project. The goal was to put a model in place in ND to prevent unnecessary guardianships which are costly and, more importantly, take away rights of Individuals who may just need support to understanding options and potential consequences of their decisions.

Why put Supported Decision-Making into law?

For over a year, the Steering Committee reviewed programs in other states, studied the guardianship process, consulted ND providers and legal experts, and gathered input from other ND stakeholders.

There was a concern whether the Supported Decision-Making model would be accepted by clinicians, financiers, or other providers. The group learned that in many states, a legislative statute was used to provide the necessary validity. After much deliberation, the committee made the decision to pursue legislation in ND.

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Why use Supported Decision-Making rather than a Guardianship?

Many North Dakotans think of guardianship as a generous way of assuring a good life for their children with disabilities, parents, or grandparents.

Supported Decision-Making has proven in other states to be an effective means of restoring an Individual's decision-making ability to enjoy some control over his/her life. Many Individuals who have a guardian could make well-informed, voluntary choices ... if provided some decision-making support.

In North Dakota, guardians with unnecessarily broad decision-making authority are far too common and there are not enough, either relatives or professional guardians, to satisfy the demand. Use of Supported Decision- Making Agreements would help to address the shortage of qualified guardians in ND.

Individuals using Supported Decision-Making would no longer be labeled "wards." Many Individuals using Supported Decision-Making would not fall victim to the common experience of becoming depressed due to feeling the loss of legal identity, self-esteem, and value as a person.

For many people, Supported Decision-Making agreements may be the only tool they need. Supported Decision-Making is flexible and can be updated easily as the Individual's ability and capacity to make decisions changes over time, through gaining of experience and skills or acquiring additional functional impairments. Supported Decision-Making agreements can include more or fewer Supporters and types of decisions with which the Individual wants assistance.

What other states use Supported Decision-Making?

States with comprehensive decision-making legislation:

Alaska (2018)

Colorado (2021)

Delaware (2015)

District of Columbia (2018) Indiana (2019)

Louisiana (2020)

Nevada (2019)

North Dakota (2019)

Rhode Island (2019)

Texas (2015)

Washington (2020) 2

Wisconsin (2018)

The American Bar Association adopted a Resolution in August 2017, encouraging the use of Supported Decision-Making as an alternative to guardianship, and specifically urged states to revise their statutes to include Supported Decision-Making as a legally recognized option.

Does Supported Decision-Making save money?

There is no cost to Supported Decision-Making legislation, and there may be some cost savings if the option to use Supported Decision-Making is chosen instead of more restrictive measures, like guardianships, that require a court process and frequently formal legal representation.

Does information remain confidential under Supported Decision-Making agreements?

The Individual may sign separate authorizations when appropriate to allow others to disclose confidential documents, records, and information to a Supporter identified in the authorization. An authorization may allow an Individual to provide copies of these to the Supporter.

A Supporter may obtain information about the Individual only by having written authorization that complies with the applicable federal or state law. A Supporter may not allow unauthorized access to, use of, or disclosure of any confidential documents, records, and other information about the Individual, unless the named Individual has otherwise directed.

Are people who use Supported Decision-Making at risk for financial or other exploitation?

With Supported Decision-Making, the Individual is always in control of their own decisions and their Supported Decision-Making agreement; they can choose to revoke a Supported Decision-Making agreement at any time.

Supported Decision-Making agreements are automatically revoked if the Supporter has been:

- convicted of a crime involving abuse, neglect, or exploitation;
- a restraining order has been issued by a court to protect the Individual from the Supporter; or
- a court has determined the Supporter lacks capacity to make or communicate responsible decisions concerning residential or education matters, medical treatment, legal affairs, vocational, financial, or other matters affecting the health and safety of the Individual.

More Questions? Contact Brad Peterson, Staff Attorney, ND P&A
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