

Supported Decision-Making

Supported decision-making (SDM) is an alternative to guardianship and conservatorship. It is suitable for many individuals, but not all individuals. SDM does not replace the need for guardianship and conservatorship for everyone. Instead, SDM offers a vital alternative to the intrusion of guardianship and conservatorship for disabled and elderly individuals who have the capacity to make life decisions, but need help in doing so.

Unlike guardianship or conservatorship, SDM allows the disabled individual to control decisions about his or her health, well-being, education, and finances. Instead of a court appointing a guardian or conservator to make decisions for the disabled person, SDM allows the disabled person to remain the decision-maker, and acknowledges the role of trusted advisors in the disabled person's life as a resource for the decision-maker to draw from in the decision-making process. They have full agency and may choose to reject or perhaps not even seek advice from their advisors. We call this the "dignity of risk".

SDM is a legally recognized arrangement in several states, and there is legislation pending in Massachusetts to make SDM available and enforceable in the Commonwealth. (*An Act Relative to Supported Decision-Making Agreements for Certain Adults with Disabilities – H1485 / S109*). In states where SDM legislation has been enacted (as of 2024, that is 16 states and counting), SDM agreements are legally recognized writings that memorialize the individual decision-maker's right to self-determination while documenting his or her need for assistance from identified supporters.

SDM agreements address the kinds of decisions that the decision-maker controls, including, but not limited to: (i) decisions related to where the decision-maker wants to live; (ii) the services, supports, financial decisions and medical care the decision-maker wants to receive; (iii) whom the decision-maker wants to live with; and (iv) where the decision-maker wants to work.

The role and authority of the supporter is also outlined in the SDM agreement. For example, the legislation currently pending Massachusetts enumerates the following possible roles for the supporter:

- (1) assisting with making decisions, communicating decisions, and understanding information about, options for, the responsibilities of, and the consequences of decisions;
- (2) accessing, obtaining, and understanding information that is relevant to decisions necessary for the decision-maker to manage his or her affairs, including medical, psychological, financial, and educational information; and medical and other records;
- (3) ascertaining the wishes and decisions of the decision-maker; assisting in communicating those wishes and decisions to other persons; and assisting to ensure the decision-maker's wishes and decisions are implemented; and

(4) accompanying the decision-maker and participating in discussions with other persons when the decision-maker is making decisions or attempting to obtain information for decisions.

However, the supporter may exercise only the authority granted to the supporter in the SDM agreement.

As more states enact SDM legislation, the uses (and limits) of this option for disabled and elderly individuals becomes clearer. The general consensus is that SDM provides a much-needed way to preserve self-determination, while also keeping unnecessary guardianships and conservatorships from inundating overrun court systems. It is important to note that SDM is formalizing arrangements that many disabled individuals and their supporters have been utilizing all along. This formalization is necessary for the community at large to accept these arrangements and to ensure the protection of the disabled person and their agency. It also provides a formalized opportunity for person-centered planning.

Person Centered Planning

Developing a person-centered plan is about reviewing the list of supporters and making sure that the supported person is at the center of the team and at the center of the support goals. We are not fitting their needs into a structure that already exists; rather the plan builds a structure around the supported person and supports their choices for their life. Their voice is the most important one and their choices should be honored. Person-centered planning should always be undertaken whether you are using SDM, a guardianship and conservatorship, or other legal decision-making alternatives. Everyone can express their choices if you listen closely enough.