

FAQ: Supported Decision-Making

What is Supported Decision-Making?

Supported Decision-Making can sound like a new, foreign idea. But most families, people with disabilities, and advocates are already using supported decision-making, even if they don't call it that. In fact, most people without disabilities are also already using supported decision-making.

Throughout our lives, all of us consult a trusted, self-selected network of friends, colleagues, family, neighbors, and professionals when making all sorts of life choices. These choices could be about where to live, what to do during the day, how to spend money, or when to see a doctor. We confer and consult with others, and then we decide on our own. Everyone needs support to make decisions.

Supported decision-making means helping a person understand their options when making choices and communicate their own decisions.

Let's create better supports so people with disabilities can lead more independent lives!



What is a Supported Decision-Making Agreement?

Supported Decision-Making agreements are designed to help the Person interact and communicate their decisions with third parties. People with disabilities and older adults can use their network of trusted family members, friends and professionals and formally identify Supporter(s) in a Supported Decision-Making agreement to help them gather information, understand and evaluate options, and communicate their decisions to others.

A Supported Decision-Making agreement includes a list of decisions the person with a disability wants assistance in making and identifies a Supporter(s) they want to help them.

The Supported Decision-Making agreement lets teachers, doctors, bankers, and other professionals know that the Person has given the Supporter consent to hear, receive, and discuss information with them, and/or it is ok to release records to the Supporter (provided applicable releases are signed).

Wis. Stats. Ch 52 outlines who and how supported decision-making agreements can be used in Wisconsin. The statute includes the Supported Decision-Making agreement form; the exact language from the statute has been transferred to a downloadable form available here: <https://www.dhs.wisconsin.gov/library/f-02237.htm-0>



Who can use a Supported Decision-Making Agreement?

Under Wisconsin law, only certain people can use Supported Decision-Making agreements. People who can use Supported Decision-Making agreements are defined within Wisconsin's law as people with "functional impairments" and include:



- ▶ People with physical, developmental, or mental conditions that substantially limit one or more of an individual's 1) Capacity for independent living, 2) Self direction, 3) Self care, 4) Mobility, 5) Communication, 6) Learning. (also referred to as major life activities)
- ▶ People experiencing degenerative diseases or other like incapacities.
- ▶ Conditions incurred at any age that substantially interfere with the Person's ability to provide self-care.

The statute does not require that the existence of a functional impairment needs to be determined or "certified" by health care professionals

Who can be a Supporter?

The person chooses their own Supporter. Supporters can be friends, family members, co-workers, colleagues, people with professional expertise, or others within the person's trusted network of support.

What is the Supporter's role?

The possible roles of the Supporter are limited to:

1. Access, collect, or obtain information relevant to a decision area the Person has chosen. Note: the law limits access to personal information. Only information that is relevant to the decision with which a Supporter has been asked to assist is accessible by the Supporter, and a Supporter is allowed to access records that require a release only if the Person has signed a release allowing the Supporter to see the information.
2. Helping the person understand that information;
3. Helping the Person understand their options, responsibilities, and consequences of that person's life decisions, without making those decisions on behalf of that person
4. Assisting with communicating the Person's decision to others

Supported Decision Making agreements do NOT give Supporters any new rights. The Supporter has no authority to make the person's decisions (the Person makes all their own decisions). Supporters cannot sign legal documents for the Person or bind a Person to a legal agreement. Supporters have only the authority/role granted by the Person under the terms of the supported decision-making agreement.

Supported decision-making agreements do NOT restrict a Person's rights to make any decisions. Having a supported decision-making agreement does not preclude the Person from acting independently of the agreement or making decisions that the Supporter does not agree with. The Person is always in control of their own decisions



What kinds of decisions can an SDM agreement help with?

Supported Decision-Making agreements can be used for any decisions the Person feels they need additional support—such as housing, health care, financial affairs, or other areas the Person identifies on the Supported Decision-Making agreement form.

Types of decisions included on Supported Decision-Making agreement form within the statute include:

- ▶ Obtaining food, clothing, and shelter
- ▶ Taking care of my physical health
- ▶ Managing my financial affairs
- ▶ Taking care of my mental health
- ▶ Applying for public benefits
- ▶ Assistance with seeking vocational rehabilitation services and other vocational supports

The form also includes a customizable field “other decisions I have specifically identified that I would like assistance with” that allows the person to write in other types of decisions they wish a Supporter to assist with.

The law presumes if the person does not check Yes or No (i.e. both options are unchecked) that the Person does not want the Supporter to help with that kind of decision.

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Is there a cost to set up an SDM agreement?

No.

The statute includes the Supported Decision-Making agreement form; the exact language from the statute has been transferred to a downloadable form available here: <https://www.dhs.wisconsin.gov/library/f-02237.htm-0>

Can a Supported Decision-Making agreement be changed?



The Person is always in control of their own decisions and their Supported Decision-Making agreement.

The Person can include a specific date when the agreement ends.

Either the Person or the Supporter can revoke a Supported Decision-Making agreement at any time.

Supported decision-making agreements are automatically revoked if the Supporter has a substantiated allegation of neglect or abuse of the person, the Supporter has been found criminally liable for abuse or neglect, or there is a restraining order against the Supporter.

Does information remain confidential under Supported Decision-Making agreements?

Wisconsin law limits access to personal information to only information that is relevant to the decision with which a Supporter has been asked to assist and establishes clear parameters on how records protected by confidentiality can be accessed by a Supporter with the permission of the Person.

Wisconsin law requires Supporters to ensure all personal information they access in the course of fulfilling a Supported Decision-Making agreement is kept privileged and confidential and is not subject to unauthorized access, use, or disclosure.

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

With Supported Decision-Making the Person 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 a substantiated allegation of neglect or abuse of the person, the Supporter has been found criminally liable for abuse or neglect, or there is a restraining order against the Supporter.

Anyone who suspects that a Supporter is abusing, neglecting, or financially exploiting an older adult or person with a disability can report their concerns to the elder or adult at risk agency, or appropriate law enforcement agency.

How is a Supported Decision-Making agreement different from Powers of Attorney?



Powers of Attorney are limited to certain kinds of decisions—health care or financial. Powers of Attorney (POA) designate another individual (a POA) to make certain kinds of decisions on the Person's behalf.

POAs can be set up in different ways. Some POAs are activated only when a person is incapacitated. Or a POA can be written so an individual other than the Person is always the designated decision maker in certain areas.

Health care POAs can allow another person (a POA) to make health care decisions on the individual's behalf under certain circumstances. What decision-making authority is granted, when, and for how long are all items that may be outlined in a POA agreement.

Financial POAs can allow another person (a POA) to make financial decisions on the individual's behalf. What decision-making authority is granted can be customized in the POA agreement. Financial POAs remains in effect

unless revoked. Changing a financial POA can only be accomplished by revoking the old one, completing a new financial POA, notifying the agent who assisted in creating it and anyone else affected by the financial POA form (i.e. financial institution).

Supported Decision Making agreements can cover many decision types not typically covered by traditional Powers of Attorney like housing/living arrangements, choosing a service provider (examples internet, cellphone, cleaning service), filing taxes etc.

With Supported Decision-Making agreements, older adults and people with disabilities remain fully in charge of their decisions. The Person chooses trusted relatives, friends, and people with expertise in an area to help them gather information, understand options, and communicate decisions to others, but the Person always makes their own decisions.



How are Supported Decision-Making agreements different than Guardianship?

Limited and full guardianships restrict or remove entirely the Person's right to make decisions in some or all areas of decision-making. Authority to make decisions on the person's behalf is transferred to a court-appointed Guardian.

Once guardianship is granted by the courts it is difficult (and costly) to modify or reverse the guardianship; any changes must be made through a formal court process.

With Supported Decision-Making agreements, older adults and people with disabilities remain fully in charge of their decisions.

Can Supported Decision-Making agreements be used in combination with other legal arrangements?

Yes.

Supported Decision-Making agreements can be used in combination with other legal arrangements, including Power of Attorney and limited guardianship. These options are not mutually exclusive and can be used to complement each other.

Supported Decision-Making as a concept is a valuable tool even when the legal right to make some or all decisions has been transferred to a guardian. Wisconsin has a limited guardianship system. Guardians are charged with placing the least possible restrictions on the person's ability to make choices, be part of the community, and identify and honor the individual's preferences. Using Supported Decision-Making can help guardians understand their ward's wishes



For many people Supported Decision-Making may be the only tool they need to have trusted people provide support as they make their life decisions.

Are Supported Decision-Making agreements a legal option in other states?

Texas, Delaware, Tennessee, Wisconsin, and Alaska have enacted supported decision-making legislation.

Additional states exploring Supported Decision-Making legislation include Indiana, Maine, Missouri and North Carolina. Virginia recommended Supported Decision-Making legislation in response to a study required by the state legislature. Vermont has established a Task Force on Supported Decision-Making.

The American Bar Association adopted a Resolution August 14, 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.

