



Virginia Department of
Behavioral Health &
Developmental Services

Supported Decision- Making & Supported Decision-Making Agreements: An Overview



Presented by the Office of Provider Development

DBHDS Vision: A life of possibilities for all Virginians



Pre-Training Quiz



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Pre-Training Quiz

1. Supported Decision-Making is a concept that occurs when a person makes decisions (choices) with the support (help) of people they trust.
A. True
B. False
2. A Substitute Decision-Maker makes the final decision when using Supported Decision-Making.
A. True
B. False
3. Someone must have a Supported Decision-Making Agreement to receive Medicaid Services.
A. True
B. False
4. Supported Decision-Making Agreements increase a person's chances of being abused or exploited by others.
A. True
B. False
5. Supported Decision-Making can help people increase capacity (understanding) in different parts of their lives in order to avoid restrictive decision-making options, such as legal guardianships.
A. True
B. False

Training Agenda

- Defining Supported Decision-Making
- History of Supported Decision-Making
- Virginia Laws and Codes
- The Three (3) C's
- Supported Decision-Making Agreements: Definitions and Information
- Other Types of Representation
- SDM within Substitute Decision-Making
- Using SDM in Different Settings
- Information and Resources
- Post- Training Survey



Supported Decision-Making: What is it?

Supported Decision- Making- “decision-making model in which an individual makes decisions with the support of trusted individuals” (American Bar Association)

There is an expectation that people with DD have the opportunity to:

- Exercise maximum self-determination
- Receive supports with making decisions in the least restrictive manner possible
- Identify who they want to help them make decisions and how

SELF DETERMINATION



Supported Decision-Making: What is it?

Informal –or- Formal

4 Principles:

1. The individual retains legal decision-making authority.
2. The relationship is freely entered into and can be terminated at will.
3. The individual actively participates in decision-making.
4. Decision made with support are generally legally enforceable.



Source: "Supported Decision-Making: A Viable Alternative to Guardianship?," Kohn, Blumenthal, and Campbell

Supported Decision-Making: What does it look like?

- Individualized, Strengths-Based Approach
- Follows Person Centered Practices
- Americans with Disabilities Act → Effective Communication
- HCBS → “...must have every opportunity to live with the same rights, freedoms, and degree of self-determination...”



Supported Decision-Making: What does it look like?

- Learn and understand how the individual best takes in information (understands, learns)
- Learn and understand how the individual communicates
- Be clear about what you know and do not know
- Ensure the individual has the information needed to make an informed decision



Supported Decision-Making Around the World

United Nations: Convention on the Rights of Persons with Disabilities

“Promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

Four Main Obligations of States Parties:

1. States must recognize legal capacity for all persons with disabilities in all aspects of life.
2. States must eliminate all systems of substituted decision-making.
3. States must establish supported decision-making mechanisms of differing kinds and intensities.
4. States must put in place safeguards to secure the respect for the rights, will, and preferences of individuals who receive support.

Sources: Backman, S. (2019). *Law Reform on Legal Capacity & Supported Decision-Making: Initiatives from Around the World*
http://timemapper.okfnlabs.org/sdm_timeline/sdm-international#0

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Supported Decision-Making in the United States

2012 legal cases:

- Jenny Hatch (Virginia)
- Dameris L. (New York)



2013 - 2014:

- 'Supported decision-making: An agenda for action' report

2014:

- The National Resource Center for Supported Decision-Making website

2015 - 2016:

- The National Resource Center for Supported Decision-Making State Project Partners
- Ryan King (Washington D.C.)

States with Laws Specific to SDM- currently 17

Sources: http://timemapper.okfnlabs.org/sdm_timeline/sdm-international#81, <http://www.supporteddecisionmaking.org/>

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History of Supported Decision-Making in Virginia

2012/2013:

- Jenny Hatch's case

2014:

- Office of the Secretary of Health and Human Resources study; Study conducted

2019:

- Office of the Secretary of Health and Human Resources study; Request failed
- The Arc of Northern Virginia Pilot Project

2020:

- Senate Bill 585/Chapter 855
- Supported Decision-Making Workgroup

2021:

- House Bill 2230/ Chapter 232

2022:

- Supported Decision-Making Workgroup #2



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Virginia Codes

1. § 37.2-314.3. Powers and duties of the Department related to supported decision-making agreements.

- Development of a supported decision-making agreement model
- Development & implementation of educational material regarding supported decision-making agreements
- Development of information regarding abuse and exploitation
- Data collection
- Report annually to Governor & General Assembly

2. § 54.1-2983.2. Capacity; required determinations.

- "Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision..."

3. 12VAC35-115-70. Participation in decision making and consent.

- "...each individual has a right to participate meaningfully in decisions regarding all aspects of services affecting him."



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AGREEMENT



Supported Decision-Making Agreements: What are they?

The Decision Maker retains ALL rights and makes ALL decisions.

Can be updated or revoked at any time.

How is one created?

- Conversations and discovery with trusted supporters
- Support Coordinator, Providers, Family Members, etc.



Supported Decision-Making Agreements: What AREN'T they?

- They ARE NOT a backdoor to guardianship.
- They DO NOT permit the Supporter to make decisions for the individual.
- They ARE NOT a way for a parent to take away an individual's rights.
- They DO NOT take the place of Advance Medical Directives or POAs.

Roles and Responsibilities of those in Supported Decision-Making Agreements

Decision Maker

- Make your own decisions
- Self-determination and dignity of risk
- Select who you want as Supporters, when you receive help and how you receive help
- Change or cancel your Supported Decision-Making Agreement at any time

Supporter

- Be available
- Know they do not make decisions
- Provide honest and fair information
- Understand dignity of risk
- Not offer advice or help if not asked for
- Not provide advice about things that could be a conflict of interest and/or they do not know about
- Take into consideration your feelings, needs, and things you like
- Respect privacy and information
- Help plan and get supports and services



Roles and Responsibilities of those in Supported Decision-Making Agreements

Supported Decision-Making Facilitator

- Help schedule meetings with Supporters
- Provide help and advice
- Monitor your Supporters
- Monitor for abuse, exploitation, manipulation, neglect, or undue influence

OPTIONAL



Abuse and Exploitation

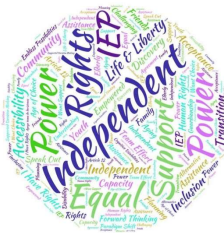
Protocol for Addressing Abuse and Exploitation:

Supporters agree to not use their position to abuse, exploit, manipulate, neglect, or provide undue influence on you. Should you have concerns, discuss these with someone you trust (another Supporter, your Supported Decision-Making Facilitator, your service providers, or another trusted adult) and contact Adult Protective Services, if needed. If abuse, exploitation, or neglect is evident, contact Adult Protective Services and emergency services (911), as appropriate. The Virginia Adult Protective Services hotline is 888-832-3858 or find the number to your local Adult Protective Services at <https://www.dss.virginia.gov/localagency/index.cgi>.

Benefits and Risks of Supported Decision-Making Agreements

Benefits

- Individuals maintains their rights
 - Increased autonomy and self-determination
- Opportunity to develop skills in order to live more independently
- Avoiding lengthy and expensive legal processes
 - Reduction in more restrictive alternatives



Benefits and Risks of Supported Decision-Making Agreements

Risks

- Nothing is free of risk
- Abuse and exploitation



Is a Supported Decision-Making Agreement right for me?

- ✓ Can take information in and get it out
- ✓ Make decisions about your life on your own or with help from people you trust
- ✓ 18 years old or older
- ✓ Have a diagnosis of a developmental disability (including intellectual disabilities)
- ✓ Do not have a court-appointed legal guardian or conservator.



Is a Supported Decision-Making Agreement right for me?



Do I need to have
a Supported
Decision-Making
Agreement?

Virginia's Supported Decision-Making Agreement

Public comment starts June 6th!

Draft includes:

- Instructions on how to complete the Supported Decision-Making Agreement
- Completed example of the Supported Decision-Making Agreement template
- Discovery tools



Virginia's Supported Decision-Making Agreement

Core Elements:

1. Who the Decision Maker wants as their Supporter(s)
2. When the Decision Maker wants help
3. How the Decision Maker wants to receive help
4. Indication that the Decision Maker and Supporter(s) agree to the information documented



Other Types of Representation

- **Power of Attorney-** is a person or multiple people you select to help make decisions about your care or different parts of your life when you are not able to do so
- **Advance Medical Directive-** a formal document that states what medical and/or psychiatric care you want in various situations
- **Representative Payee-** someone who handles and oversees your finances for you



Other Types of Representation

- **Authorized Representative**- someone permitted to consent to treatment, services, participation in human research, or agree to the release of information on behalf of another you
- **Full Legal Guardian**- someone appointed by the court to make all decisions for you once the court has found you to be legally incompetent
- **Limited Legal Guardian**- someone appointed by the court to make decisions for you only for specific topics or life areas
- **Conservator**- a person appointed by the court to handle all of your financial matters



Supported Decision- Making within Substitute Decision- Making

Substitute Decision- Making Type	Supported Decision- Making
• Power of Attorney	→ • SDM and/or SDMA
• Authorized Representative	→ • SDM and/or SDMA
• Limited Legal Guardian	→ • SDM and/or SDMA*
• Full Legal Guardian	→ • SDM



Supported Decision-Making in Different Settings

Home

School

Work

Health

Money

Services



Supported Decision-Making: Key Points

Supported Decision-Making:

- Individual (Decision Maker) maintains ALL rights
- Individual (Decision Maker) makes ALL final decisions
- Increases the individual's feelings of self-determination
- Decreases the risk of abuse and exploitation
- Can reduce the need for restrictive alternatives (i.e. legal guardianship)



Substitute Decision-Making:

- Individual loses their rights
- Someone else makes decisions FOR the individual
- Can take away an individual's sense of self-determination
- Does NOT guarantee an absence of abuse or exploitation
- Restrictive

Supported Decision-Making: Key Points

Supported Decision-Making →

- A concept or practice
- We all do this



Supported Decision-Making Agreements →

- A formal way of documenting
- Decision Maker, Supporter, Facilitator
- Must meet eligibility criteria to have one
- Flexible



REMINDER!!!

Your input is important!

The Virginia Supported Decision-Making Agreement draft is available for public comment from June 6th- July 6th.

You can access it here-

<https://townhall.virginia.gov/I/GDocForum.cfm?GDocForumID=1861>



Resources

ACLU- <https://www.aclu.org/issues/disability-rights/integration-and-autonomy-people-disabilities/supported-decision-making>

The Arc of Northern Virginia- <https://thearcofnova.org/programs-services/sdm-resource-library/>

disAbility Law Center of Virginia- <https://www.dlcva.org/supported-decision-making>

PEATC- <https://peatc.org/services/transition-to-adulthood/>

Supported Decision Making- <http://www.supporteddecisionmaking.org/>

Virginia WINGS booklet- https://www.vacourts.gov/courts/circuit/resources/guardian_options_pamphlet.pdf



Post-Training Quiz



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B. False



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Post-Training Quiz Answers

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A. True



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Questions



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