



Virginia Department of
Behavioral Health &
Developmental Services

Decision Making Options: What You Need to Know as a Support Coordinator or Provider



Presented by the Office of Provider Development

DBHDS Vision: A life of possibilities for all Virginians

Key Points

- Virginia Code
- The Three C's
- Types of Decision-Making
- Supported Decision-Making
- Codes, Regulations, & Resources
- Q&A

Virginia Code Citations

§ 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...”

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.”



The Three (3) C's

1. **Capacity** - the ability to understand/take in information important to the decision/choice, use the information in a way that makes sense to make a decision/choice, and then communicate their decision/choice to other people in a way that they communicate
2. *Competency*
3. *Consent*



The Three (3) C's

1. Capacity

2. Competency - the ability to do something successfully or well, such as making important decisions, typically does not change based on time and/or situations, determined by a judge

3. *Consent*



The Three (3) C's

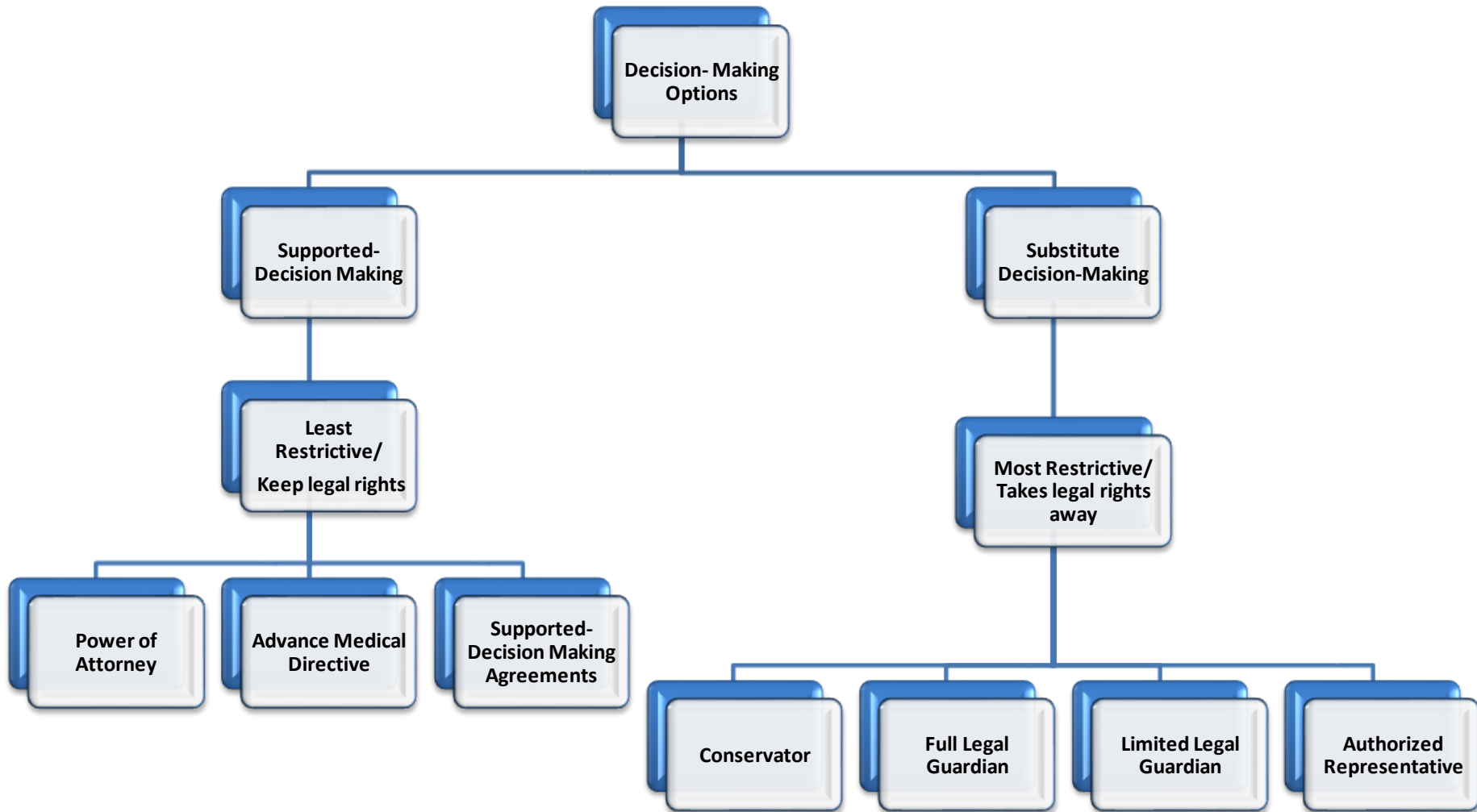
1. Capacity

2. Competency

3. Consent - 1. *Simple consent* - when you make decisions about regular activities during the day; 2. *Informed consent* - when you make decisions about things that involve some risk



Decision-Making Options: Supported vs. Substitute



Decision-Making Options

Virginia's Continuum of Decision-Making Supports

Supported Decision-Making Agreements

§ 37.2-314.3- formal document written by an adult capable of making an informed decision with the support of others, that states when they want to receive support with decisions, who they want to support them, and how they want to receive support

Advance Directives

§ 54.1-2982- when an adult capable of making an informed decision makes a written statement to address any or all forms of health care in the event he or she is later incapable of making an informed decision

Powers of Attorney

§ 64.2-1600- granting someone to act in your place

Authorized Representatives

12VAC35-115-146- individuals designated to act as substitute decision makers for persons receiving care with DBHDS-licensed providers, who are found to lack capacity, and who do not already have a designated substitute decision maker

Temporary Guardianship and Limited Guardianship

§ 64.2-209- when a person is appointed by the court to be responsible for an incapacitated person's personal affairs for a specific period of time or for a limited purpose

Full Guardianship

§ 64.2-200- when a person is appointed by the court to be responsible for the personal affairs of an incapacitated person

Least Restrictive

Most Restrictive

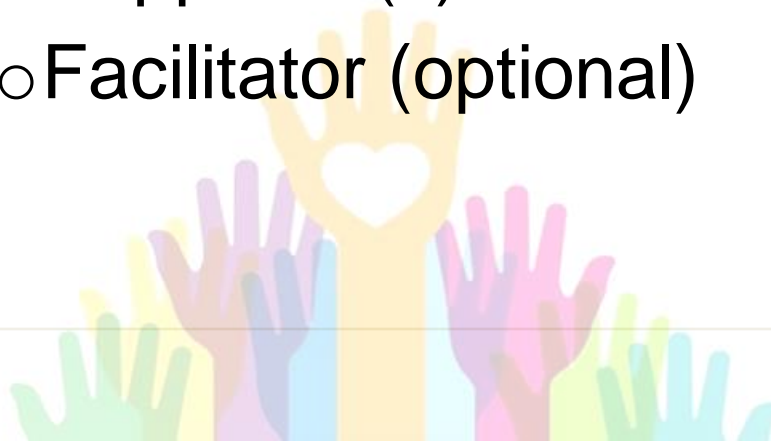


Supported Decision-Making Agreements

Supported Decision-Making Agreement - The formal process of documenting who an individual wants to support them, in what areas of life, and how they want to be supported.

Comprised of:

- Decision Maker (Principal)
- Supporter(s)
- Facilitator (optional)



Supported Decision-Making Agreements

Who can have one?

- Anyone 18 years or older with a diagnosis of DD (including ID)
- Cannot have a legal guardian

How is one created?

- Conversations and discovery with trusted people
- Support Coordinator, Providers, Family Members, etc.
- Ensure Supporters/ Facilitator agree
- Can be created, updated, or revoked at any time.



Power of Attorney

Power of Attorney - a document that identifies a person or multiple people (agents) someone selects to help make decisions about their care or different parts of their life when they are not able to do so

Who can have one?

- Anyone 18 years or older who retains legal competency

How is one created?

- Free - online templates ([disAbility Law Center of Virginia](#))
- Paying a lawyer to create one



Advance Medical Directive

Advance Medical Directive - a formal document that states what medical and/or psychiatric care someone wants in various situations, including end of life decisions (living will)

Who can have one?

- Anyone 18 years or older who has legal competency at the time it was created

How is one created?

- With a medical or healthcare professional
- Using online templates ([disAbility Law Center of Virginia](#))

Representative Payee

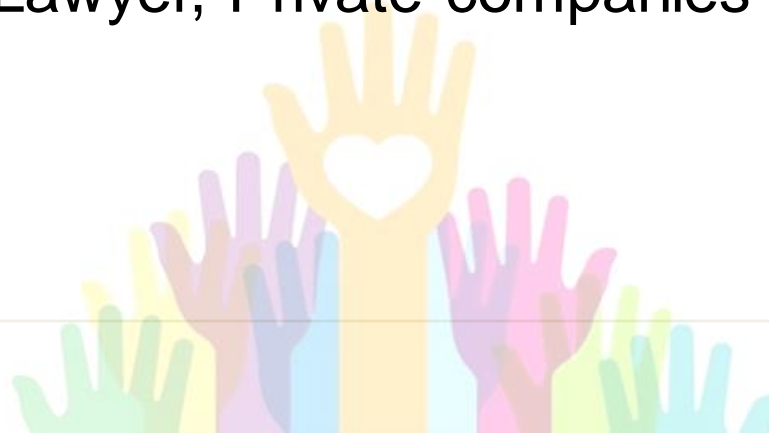
Representative Payee or Fiduciary - someone who handles and oversees someone's finances

Who can have one?

- Anyone 18 years or older

How is one created?

- Representative Payee - Social Security Administration
- Fiduciary - Lawyer, Private companies



Authorized Representative

Legal Authorized Representative vs. DBHDS Authorized Representative

Authorized Representative - someone permitted to consent to treatment, services, participation in human research, or agree to the release of information on behalf of another person

Who can have one?

- Anyone 18 years or older
- Can be deemed to lack capacity or choose to have one, even if you maintain capacity

How is one created?

- Capacity Evaluation
- Through each entity/ provider



Limited Legal Guardian

Limited Legal Guardian - someone appointed by the court to make decisions for someone else only for specific topics or life areas, can be temporary

Who can have one?

- Anyone 18 years or older
- Must be deemed to be legally incompetent

How is one created?

- Petitioning the local circuit court
- *[Public Guardianship Program \(DARS\)](#)

Full Legal Guardian

Full Legal Guardian - someone appointed by the court to make all decisions for someone else once the court has found them to be legally incompetent, can be temporary

Who can have one?

- Anyone 18 years or older
- Must be deemed to be legally incompetent

How is one created?

- Petitioning the local circuit court
- *[Public Guardianship Program \(DARS\)](#)
 - [Individuals with ID/DD](#)

Conservator

Conservator - a person appointed by the court to handle all financial matters for someone else, can be limited or temporary

Who can have one?

- Anyone 18 years or older
- Must be deemed to be legally incompetent

How is one created?

- Petitioning the local circuit court
- *[Public Guardianship Program \(DARS\)](#)

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)

4 Principles for Supported Decision-Making in Virginia:

1. Presumed capacity
2. Least restrictive option, and maximize an individual's autonomy and independence
3. Always take into consideration an individual's expressed personal preferences
4. Dignity of Risk

SELF DETERMINATION



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



Decision-Making Options: Supported vs. Substitute

Supported Decision-Making:

- Individual (Decision Maker) keeps 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 prevent the risk of abuse or exploitation
- Restrictive

Understanding Acronyms

SDM:

Supported Decision-Making - a concept or practice (There are no “Supported Decision-Makers.”)

Substitute Decision-Maker - a person appointed to make decisions for someone else (NOT the same as Supported Decision-Making!)



Decision-Making Compatibility

| Decision-Making Option | Compatible With | Not Compatible With |
|-------------------------------------|--|--|
| Supported Decision-Making Agreement | Power of Attorney, Advance Medical Directive, DBHDS Authorized Representative, Representative Payee/ Fiduciary | Legal Guardian*, Conservator* |
| Power of Attorney | Supported Decision-Making Agreement, Advance Medical Directive, DBHDS Authorized Representative, Representative Payee/ Fiduciary | Legal Guardian, Conservator |
| Advance Medical Directive | Supported Decision-Making Agreement, DBHDS Authorized Representative, Representative Payee/ Fiduciary, Power of Attorney*, Legal Guardian**, Conservator** | None (if created when individual still had legal competency or capacity) |

Decision-Making Compatibility

| Decision-Making Option | Compatible With | Not Compatible With |
|---------------------------------|---|--|
| DBHDS Authorized Representative | Supported Decision-Making Agreement, Advance Medical Directive, Power of Attorney, Representative Payee/ Fiduciary, Conservator | Limited Legal Guardian, Full Legal Guardian |
| Representative Payee/ Fiduciary | Supported Decision-Making Agreement, Advance Medical Directive, Power of Attorney, DBHDS Authorized Representative, Limited Legal Guardian, Full Legal Guardian | Conservator |
| Conservator | Limited Legal Guardian, Full Legal Guardian, Power of Attorney, DBHDS Authorized Representative, Advance Medical Directive* | Supported Decision-Making Agreement, Representative Payee/ Fiduciary |

Decision-Making Compatibility

| Decision-Making Option | Compatible With | Not Compatible With |
|------------------------|---|--|
| Limited Legal Guardian | Conservator, Representative Payee/ Fiduciary, Advance Medical Directive*, DBHDS Authorized Representative** | Supported Decision-Making Agreement, Power of Attorney |
| Full Legal Guardian | Conservator, Representative Payee/ Fiduciary, Advance Medical Directive*, DBHDS Authorized Representative** | Supported Decision-Making Agreement, Power of Attorney |

Virginia Regulations

Human Rights

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

12VAC35-115-145. Determination of capacity to give consent or authorization.

12VAC35-115-146. Authorized representatives.



Virginia Regulations

Supported Decision-Making Agreements

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

Health Care Decisions Act

Article 8. Health Care Decisions Act.

§ 54.1-2983.2. Capacity; required determinations.



Virginia Regulations

Guardianship

Part D. Guardianship of Incapacitated Persons.

§ 64.2-2019. Duties and powers of guardian.

Power of Attorney

Chapter 16. Uniform Power of Attorney Act



Resources



[*DBHDS Office of Human Rights*](#)

[*DBHDS Supported Decision-Making*](#)

[*disAbility Law Center of Virginia*](#)

[*Parent Educational Advocacy Training Center \(PEATC\)*](#)

[*Partnership for People with Disabilities*](#)

[*Person Centered Thinking Training*](#)

[*Virginia WINGS booklet*](#)



Questions



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