



# The Spectrum of Decision-Making Options in Virginia: Supported Decision-Making to Guardianship & Everything In Between



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Supported Decision-Making Community Resource Consultant Lead





- Definitions
- Supported vs. Substitute Decision-Making
- Different Types of Decision-Making
- Decision-Making Compatibility
- Codes, Regulations, & Resources
- Questions and Answers



*The information in this training is meant as a resource and informational purposes only, not as legal advice.*



Have you ever made a  
decision that didn't turn out  
well?



Having terminology explained in plain language?

Research online to understand what your options are?

Make a pro/con list?

Reminders for important appointments/dates about this decision?

Advice from a friend or family member?

Time to think through the complex choice?

# What are your rights?

- Vote
- Drive
- Relationships (marry/ divorce)
- Enter contracts
- Where you live
- Buy, sell, or rent property
- Possess a gun/firearm
- Make medical decisions
- Make decisions about your money
- Make/ change a will
- Make an Advance Directive

*(disAbility Law Center of Virginia)*





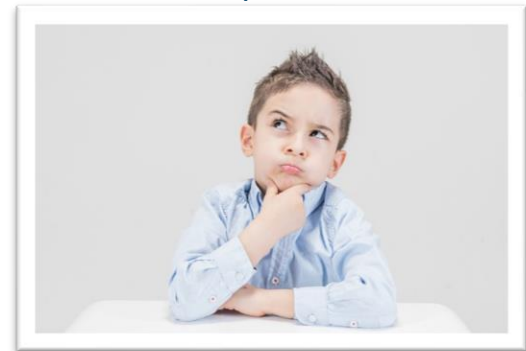


**ASSUME THAT I CAN  
SO MAYBE I WILL**

**Decision Making-** “the process of making choices by identifying a decision, gathering information, and assessing alternative resolutions” (Umass Dartmouth)

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

**Substitute Decision-Making-** a decision-making model in which a person (or multiple people) is appointed to make “decisions on behalf of an individual who is incapable of making those decisions for himself” (*Guide to Consent and Substitute Decision Making*, VACSB)



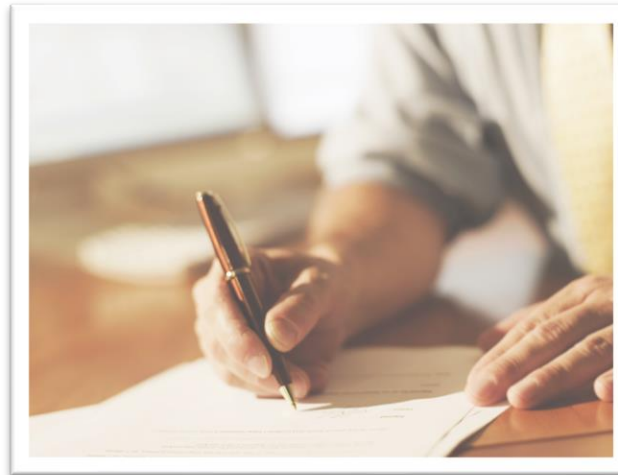
**Shared Decision-Making-** “a process in which clinicians and patients work together to make decisions and select tests, treatments and care plans based on clinical evidence that balances risks and expected outcomes with patient preferences and values.” (*National Learning Consortium*)





**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

- *Must have capacity to provide informed consent*
- *Supported decision-making can be used in order to provide informed consent*

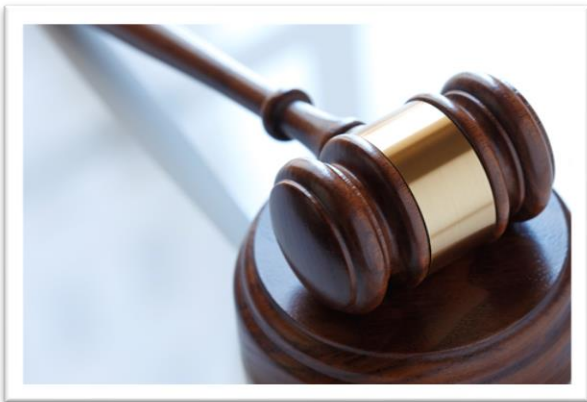


***Incapacitated*** – when a court determines that an adult is not able understand information or make decisions well enough to:

1. Care for their own health, safety, or basic needs

- and/or -

2. Manage their money or support themselves or their dependents without someone else managing their finances



- *Results in the court appointing a guardian and/or conservator*
- *Displaying poor judgement alone does not meet criteria*

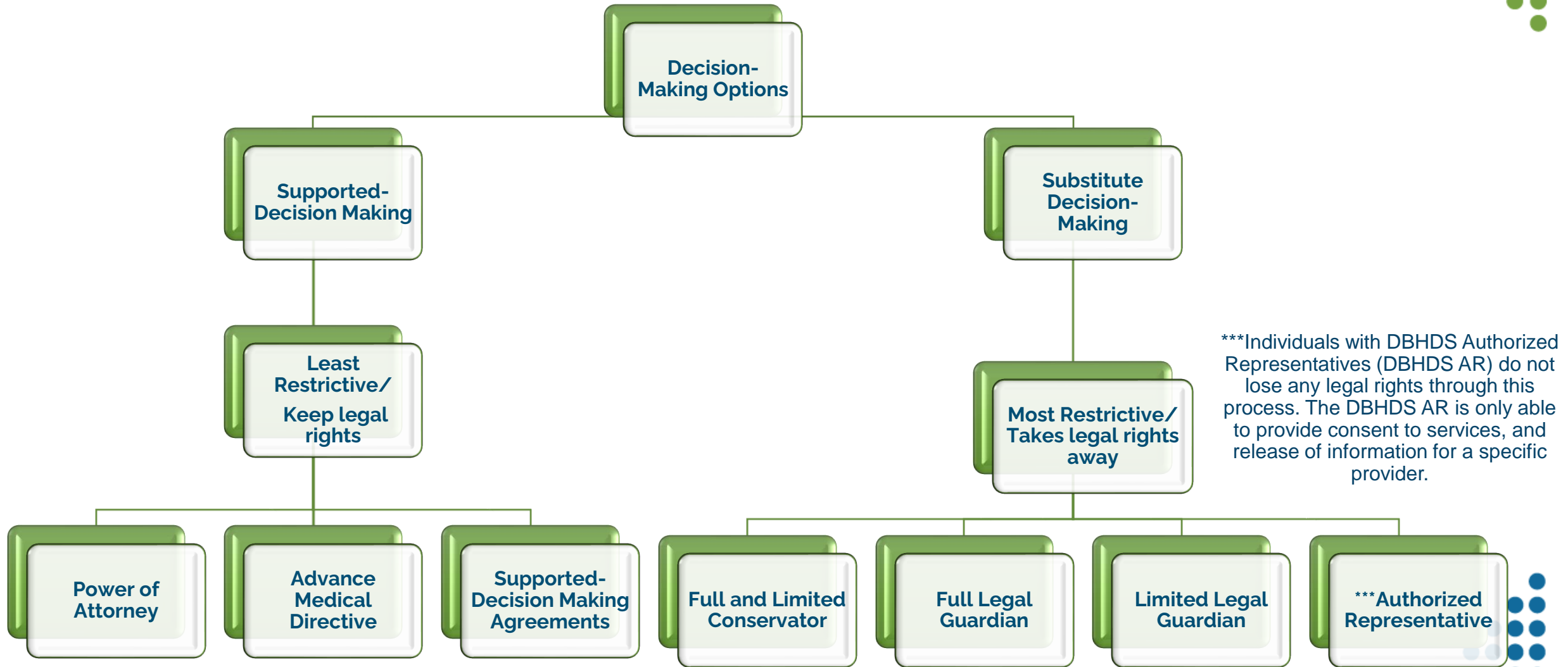
***“Incapable of making an informed decision”***- when an adult cannot understand or think clearly enough to make a medical decision due to:

- a mental health condition,
- intellectual disability, or
- another condition that affects their ability to communicate or judge situations

They do not understand what a medical treatment involves, its risks, benefits, or other treatment options.



- *Not solely based on a particular clinical diagnosis*
- *People who are deaf or have communication disorders but can still understand and express their decisions in other ways are not considered incapable of making an informed decision*



### 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



## SDM:

- **Supported Decision-Making** - a concept or practice, the Decision Maker makes the final decision for themselves (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!)
- **Shared Decision-Making** - a concept or practice, decisions are made as consensus among the team (NOT the same as Supported Decision-Making!)

## 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**



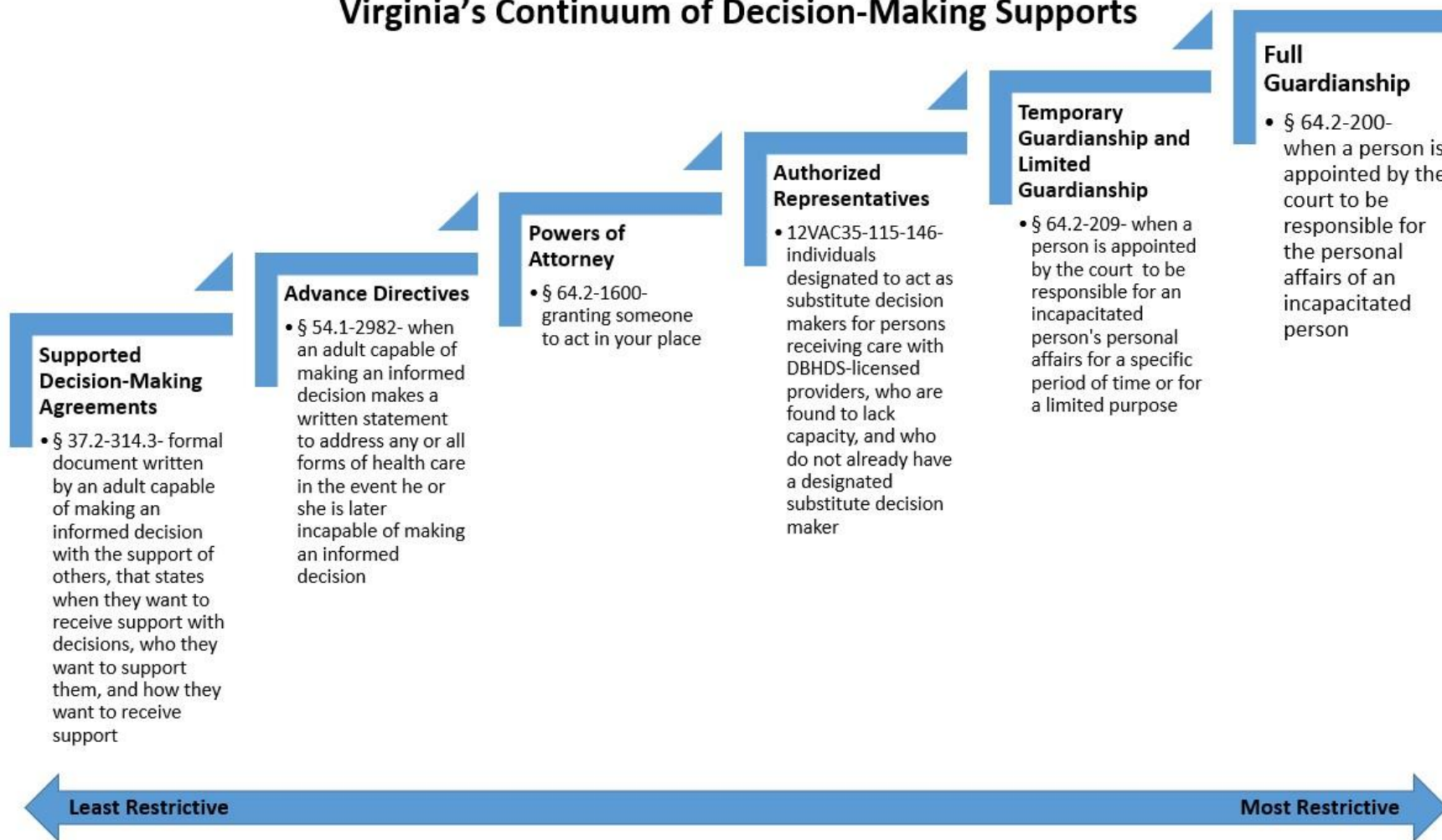
## Informal –or- Formal

### Supporters should:

- ✓ 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



## Virginia's Continuum of Decision-Making Supports



**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)

Can be created, updated, or revoked at any time.





- **Decision Maker-** the person making the Supported Decision-Making Agreement

*Must be: at least 18 years old, have an intellectual or developmental disability, and be able to legally make your own decisions*

- **Supporter(s)-** the person/people the Decision Maker asks to support them in their SDMA, Supporters agree to help

- **Facilitator (optional)-** the person the Decision Maker asks to make sure Supporters to what they agree to, can be a Supporter or can be someone else



## ***Who can have one?***

- Anyone 18 years or older with a diagnosis of DD (including ID)
- Is legally able to make their own decisions (cannot have a legal guardian/conservator)

## ***How is one created?***

- Conversations and discovery with trusted people
  - Support Coordinator, Providers, Family Members, etc.
- Ensure Supporters/ Facilitator agree
- Contact me for help!



**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, can be general or specific, presumed to be durable in Virginia (unless stated otherwise)

### ***Who can have one?***

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

### ***How is one created?***

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

**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), you can appoint an agent to ensure your wishes are followed and/or make decisions for you when you are not able to do so

### ***Who can have one?***

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

### ***How is one created?***

- With a medical or healthcare professional
- With a Facilitator → [Honoring Choices Virginia](#)
- Using online templates →
  - [disAbility Law Center of Virginia](#)
  - [Virginia State Bar](#)
- Upload into registry → [ConnectVirginia](#)

**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
- VA Fiduciary - Dept. of Veterans Affairs
- Fiduciary (Power of Attorney, Trusts) - Lawyer, Private companies

**Other options for financial assistance:**

- Local money management programs ([Area Agencies on Aging](#))
- Authorized signers on bank accounts
- Joint accounts



**Legally Authorized Representative** – an individual or entity that is legally permitted to act on behalf of another person, examples include legal guardian, conservator, agent on a durable power of attorney or an advance directive

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**Authorized Representative (DBHDS)** - 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
- Deemed to lack capacity

***How is one created?***

- Capacity Evaluation
- Through each entity/ provider

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

**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 incapacitated by the court

### ***How is one created?***

- Petitioning the local circuit court
- Public Guardianship Program (DARS)
  - Individuals with ID/DD

**Limited Conservator** - a person appointed by the court to handle some/ specific financial matters for someone else, can be temporary

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

### ***Who can have one?***

- Anyone 18 years or older
- Must be deemed incapacitated by the court

### ***How is one created?***

- Petitioning the local circuit court
- Public Guardianship Program (DARS)
  - Individuals with ID/DD

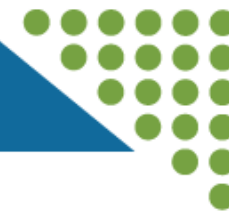
Decision-Making Option	Compatible With	Not Compatible With
Supported Decision-Making Agreement	Power of Attorney, Advance Medical Directive, DBHDS Authorized Representative, Representative Payee/ Fiduciary	Legal Guardian*, Conservator*
Power of Attorney	Supported Decision-Making Agreement, Advance Medical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

Find a printable version of the Decision-Making Options Compatibility Chart [here](#).



## **§ 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.”



12VAC35-115-70(A)(4) “**Be accompanied**, except during forensic evaluations, **by a person or persons whom the individual trusts to support** and represent him when he participates in services planning, assessments, evaluations, including discussions and **evaluations of the individual's capacity to consent**, and discharge planning.”



The screenshot shows the DBHDS website with the following navigation path highlighted by red arrows:

- Home
- About DBHDS
- Developmental Services
- For Individuals & Families
- Supported Decision Making

The right sidebar contains the following content:

### Supported Decision-Making and Supported Decision-Making Agreements

Virginia now formally recognizes Supported Decision-Making Agreements as an alternative to more restrictive, substitute decision-making options, such as legal guardianships. Supported Decision Making Agreements are a way for adults with developmental disabilities living in Virginia to document when they want to receive support with making decisions, how they want to receive support, and who they want to help them. Supported Decision-Making Agreements give individuals with developmental disabilities the ability to receive support with making various choices in their lives, while also retaining all of their rights, including the right to make their own decisions.

For questions regarding Supported Decision-Making and/or Supported Decision-Making Agreements please contact Sara Thompson at [Sara.Thompson@dbhds.virginia.gov](mailto:Sara.Thompson@dbhds.virginia.gov)

**Virginia's Supported Decision-Making Agreement template and Supplemental Documents/ Acuerdo para la toma de decisiones con apoyo del Estado de Virginia - Plantilla**

English

Español

### Making My Own Decisions- It's My Right!

Everyone has the right to meaningfully participate in making decisions about their life. Human Rights Regulations say that anyone who has capacity (can take in information, make a decision using that information, and then communicate their decision to others) can consent (agree) to services, treatment, or research, or agree for others to see and/or get information about them. Even if you have capacity, you still might want help with making some decisions and that is okay. If you have questions about your right to make decisions or about your other rights, please see information on the Office of Human Rights' website by clicking [here](#).

### Training Videos and Documents

- [Supported Decision Making and Supported Decision Making Agreements: An Overview Trainings \(June 2022\)](#)
- [Supported Decision Making and Supported Decision Making Agreements: The Details Trainings \(August 2022\)](#)
- [PEATC Series 3 Discovery Tools and the Virginia Supported Decision-Making Agreement template \(January- February 2023\)](#)

To get more help with decision-making options and supported decision-making agreements click on these resources:

- [American Civil Liberties Union \(ACLU\)](#)
- [Disability Law Center of Virginia](#)
- [National Resource Center for Supported Decision Making](#)
- [Parent Educational Advocacy Training Center \(PEATC\)](#)
- [The Arc of Northern Virginia](#)
- [The Arc of Virginia](#)
- [Virginia Department of Education](#)
- [Virginia WINGS booklet](#)

<https://dbhds.virginia.gov/supported-decision-making-supported-decision-making-agreements/>



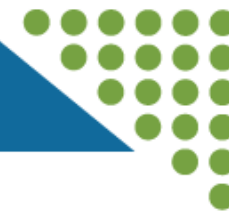
'SEE THE PERSON, NOT THE LABEL.'

Temple Grandin









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thank  
you!



**Post Training Survey**



# 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.



# 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.



# 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



*DBHDS Office of Human Rights*

*DBHDS Supported Decision-Making*

*Parent Educational Advocacy Training Center (PEATC)*

*Partnership for People with Disabilities*

*Person Centered Thinking Training*

*Virginia WINGS booklet*





*disAbility Law Center of Virginia*

*Decision-Making Resources page*

*Do It Yourself Power of Attorney (medical)*

*Do It Yourself Advance Medical Directive*

*Information on Financial Power of Attorneys*

*Information on Educational Power of Attorneys*

